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ABSTRACT

Section 821 of the Education Amendments of 1974 directed the National Institute of Education (NIE) to conduct a study of compensatory education, including those programs financed under Title I. NIE then contracted with the Legal Standards Project of the Lawyers' Committee for Civil Rights under Law to conduct a two year study of the basis for and the clarity and restrictiveness of the legal framework of Title I. Under Task I, the Project reorganized the Title I statute to achieve greater clarity, consistency, and coherence without making any substantive changes in the existing law. Under Task II, contracted through an extension of the initial study, the Project reviewed its own and other contractors' findings. It then prepared statutory language entailing changes in the existing statute and language for inclusion in the legislative history of Title I. This document includes: (1) the Task I draft reorganization of the statute; (2) memoranda concerning the reorganization; (3) Task II Statutory Amendments to Title I, integrated into the Task I material (H.R. 10891 and H.R. 10931 are based on this section of the document); and (4) a discussion of each recommendation, including a statement of the existing legal framework, major findings, the proposed statutory amendments, and proposed language for inclusion in the legislative history. (Author/GC)

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A DESCRIPTION AND ANALYSIS OF H.R. 10891 AND H.R. 10931-BILLS REORGANIZING AND AMENDING TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

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PREFACE

Introduction

On February 9,1978, Chairman Perkins of the House Subcommittee on Elementary, Secondary, and Vocational Education introduced H.R.10891. On February 14,1978, Congressman Quie introduced H.R. 10931. These bills (which are identical) are based on the work product of the Legal Standards Project of the Lawyers' Committee for Civil Rights Under Law,performed under contract with the National Institute of Education(NIE). Set forth below is a brief overview of the major purposes of the bills and a description of the contents of this paper.

Overview of the Bills

H.R. 10891 and H.R. 10931 preserve the basic Congressional policy contained in Title I since its inception in 1965: to provide supplemental financial assistance to local educational agencies to expand and improve programs which contribute particularly to meeting the special educational needs of educationally deprived children residing in low income areas. The bills also leave intact the present statutory formula for distributing Title I funds. However, the bills reorganize the statute to give a more logical structure and added clarity to the requirements of Title I and also incorporate amendments to Title I which are based on the findings of the Legal Standards Project and other NIE contractors.

The major purposes of H.R. 10891 and H.R. 10931 are to (1) clarify and logically structure the present requirements of Title I; (2) provide additional flexibility to the Commissioner, State educational agencies, and local educational agencies; (3) increase the level of pre-expenditure control by the Commissioner and State educational agencies so that problems can be detected before they adversely affect programs; and (4) insure systematic methods for the distribution of Title I funds by local educational agencies to designated project areas. Set forth below is a more extensive explanation of each of these areas.

The NIE study indicated that the provisions of the present statute should be clarified and more logically organized to facilitate greater understanding by officials who must administer Title I programs. The bills reorganize the statute into six parts: Part A--Programs Operated by Local Educational Agencies; Part B--Programs Operated by State Agencies; Part C--State Administration of Programs and Projects Assisted Under This Title; Part D--Federal Administration of Programs and Projects Assisted Under This Title; Part E--Payments; and Part F--General Provisions.

Within each of these parts, the requirements of Title I are clarified. For example, the bills clarify the manner in which Title I and State and local compensatory education programs can be coordinated without violating the provision that Title I funds supplement and not supplant State and local funds. They also clarify the responsibilities of the Commissioner and State educational agencies in areas such as auditing, and they incorporate the recommendation of the Legal Standards Project that the Commissioner develop a Policy Manual describing the legal framework and legally acceptable ways of implementing Title I programs.

The bills provide increased flexibility in a number of areas. For example, they permit schools in which 80% or more of the children are educationally deprived to utilize supplementary State and local funds along with Title I for a single compensatory education program in which all children in attendance will be considered program participants, including those children who are not considered educationally deprived, where the school district satisfies certain requirements. The bills also increase flexibility by authorizing Federal, State and local educational agencies to enter into compliance agreements in lieu of withholding Title I funds. At present, the primary method for ensuring that the provisions of Title I are followed is to withhold funds.

The bills also increase the level of pre-expenditure control by the Commissioner and State educational agencies. The amendments pertaining to pre-expenditure control are designed to mitigate the need to rely so heavily on audits as a compliance mechanism. These controls include a State management summary to be submitted annually to the Commissioner as part of the State's application and a requirement that State educational agencies adopt more systematic application approval policies. Another pre-expenditure control feature of the bills requires advance determination by the Commissioner or State educational agency that special State or local programs, as legislated, satisfy the requirements for an exemption from the excess costs and comparability provisions of Title I. This advance determination is intended to assure State and local educational agencies that exemptions are properly taken.

Finally, the bills require that local school districts use a systematic method for distributing Title I funds among designated project areas so that similarly disadvantaged children receive their fair share of Title I funds. The amendment is designed to respond to NIE's finding that widely varying methods are being used by school districts to allocate Title I funds among designated project areas. The amendment permits school districts to distribute Title I funds among areas based on concentrations of children from low income families or on the incidence of low achievement.

Overview of the Paper

Section 821 of the Education Amendments of 1974 directed NIE to conduct a study of compensatory education, including compensatory programs financed by States and those funded under Title I of the Elementary and Secondary Education Act. In partial fulfullment of this mandate, NIE contracted with the Legal Standards Project of the Lawyers' Committee for Civil Rights under Law to conduct a two-year study of the basis for and the clarity and restrictiveness of the legal framework of Title I. This study produced several reports*, including extensive analyses of (1) the program requirements with which local educational agencies must comply to receive funds under Title I; (2) the legal requirements pertaining to the administration of Title I by States; and (3) the relationship between selected State compensatory education programs and the requirements of Title I.

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*Silverstein, Robert. An Introductory Overview Concerning the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I, ESEA. (Lawyers' Committee for Civil Rights Under Law, September 1977).

Silverstein, Robert, and Daniel M. Schember. An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act. (Lawyers' Committee for Civil Rights Under Law, September 1977).

Silverstein, Robert, Patricia J. Gauvey, David Long, Carol Morgan, Daniel M. Schember. A Description and Analysis of the Relationship Between Title I, ESEA, and Selected State Compensatory Education Programs. (Lawyers' Committee for Civil Rights Under Law, September 1977).

Silverstein, Robert, Michael Gaffney, David Long, Ellen Mattleman, Carol Morgan, and Daniel M. Schember. A Description of the Title I, ESEA Legal Framework. (Lawyers' Committee for Civil Rights Under Law). (Draft)

Gaffney, Michael, Catherine Thomas, and Robert Silverstein. An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. (Lawyers' Committee for Civil Rights Under Law, September 1977).

In November of 1977, NIE extended the Legal Standards Project's contract and specified that the Project perform two additional tasks concerning reauthorization of the Title I. Under Task I, the Legal Standards Project reorganized the Title I statute to achieve greater clarity, consistency, and coherence without making any substantive changes to the existing law.

Under Task II, the Legal Standards Project agreed to review the findings of the Legal Standards Project and other NIE contractors and then, based on these findings, prepare statutory language entailing changes to the existing Title I statute and language for inclusion in the legislative history.

This paper includes: (1) the Task I draft reorganization of the statute (pages 3-56); (2) memoranda concerning the Task I draft reorganization (pages 57-74); (3) Task II Statutory Amendments to Title I, integrated into the draft reorganization of Task I (pages 75-170)*; and (4) a discussion of each recommendation, including a statement of the existing legal framework, major findings, the proposed statutory amendment, and proposed language for inclusion in the legislative history (pages 171-363).

In reviewing this paper, the following general considerations should be noted:

(1) the Task I draft reorganization is typed in block; whereas the Task II amendments prepared by the Legal Standards Project are typed in italics; and

(2) the technical amendatory language included in the work product references the proposed reorganization of Title I instead of the existing statute.

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*H.R.10891 and H.R. 10931 are based on this section of the paper.

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MEMORANDUM TO HOUSE SUBCOMMITTEE ON ELEMENTARY, SECONDARY AND VOCATIONAL EDUCATION CONCERNING TASK II

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

MEMORANDUM

January 24, 1978

TO: House Subcommittee on Elementary, Secondary, and Vocational Education

FROM: The Legal Standards Project, Lawyers' Committee For Civil Rights Under Law

SUBJECT: Submission of Task II Work Product

Pursuant to our contract with the National Institute of Education, the Legal Standards Project of the Lawyers' Committee for Civil Rights Under Law has performed two distinct tasks concerning reauthorization of Title I, ESEA. Under Task I, we reorganized the Title I statute to achieve greater clarity, consistency, and coherence without making any substantive changes to the existing law. A draft reorganization was submitted for your review on December 16, 1977.

Under Task II, we agreed to prepare (a) statutory language entailing changes to the existing Title I statute, (b) language for inclusion in the legislative history, and (c) memoranda when time was insufficient for the preparation of statutory language or language for inclusion in the legislative history. We submitted an outline of Task II priorities on December 23, 1977.

Attached herewith is a copy of the Task II assignments completed as of January 23, 1978. The paper includes: (1) the Task I draft reorganization of the Title I statute, (2) memoranda concerning the Task I draft reorganization, (3) Task II statutory amendments to Title I (integrated into the draft reorganization of Task I), and (4) a discussion of each recommendation, including a statement of the existing legal framework, major findings, the proposed statutory amendment, and proposed language for inclusion in the legislative history.

In reviewing this work product, the following general considerations should be noted:

(1) the task I draft reorganization is typed in block; whereas the Task II amendments prepared by the Legal Standards Project are typed in italics;

(2) the technical amendatory language included in the work product references the proposed reorganization of Title I instead of the existing statute;

(3) we have not prepared a detailed discussion for recommendations which were primarily technical in nature, e.g.,submission of state applications to the Commissioner, recordkeeping, reporting, and prohibition on consideration of federal aid in determining state aid; and

(4) a number of proposed amendments are interrelated--if one proposal is modified or deleted it will be important to understand the effects of this on other proposed amendments.

The assignments which are still in process(and which will be pursued as far as time permits) include memoranda concerning:

(1) modification of the existing statute to permit an LEA to distribute Title I funds to areas based on educational instead of low-income data or on a combination of educational and low-income data;

(2) the applicability of the 85 percent hold-harmless provision on a statewide rather than county-wide basis;

(3) the subcounty allocation process;

(4) the distribution of funds to LEAs according to educational deprivation rather than low-income data; and

(5) the set-aside provision.

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT AS REORGANIZED BY THE LEGAL STANDARDS PROJECT

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Section 2 Duration of Assistance

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Section 11 Grants--Amount and Eligibility
- (a) Amount of Grants
- (b) Minimum Number of Children to Qualify
- (c) Children to be Counted
- (d) Program for Indian Children

Section 12 Treatment of Earnings for Purposes of Aid to Families with Dependent Children

Subpart 2--Special Incentive Grants

Section 21 Maximum Entitlement

Section 22 Application; Use of Funds

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Section 32 Children To Be Served
- (a) General Eligibility Provisions
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- (a) Purpose of Program
- (b) Sufficient Size, Scope, and Quality
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- (a) Establishment of Advisory Councils
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Section 38 Participation of Children Enrolled in Private Schools
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- (a) Entitlement
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Section 52 Program Requirements
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Section 61 Amount and Eligibility
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PART C--STATE ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Section 101 Requirement for Submission and Approval of Application

Section 102 Required Assurance

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Section 104 Opportunity for a Hearing

PART D--FEDERAL ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Section 111 Applicability

Section 112 Program Evaluation
- (a) Independent Evaluations
- (b) Development and Publication of Standards
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- (d) Evaluation Models
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- (f) Specification of Objective Criteria
- (g) Report to Congress
- (h) Information Dissemination
- (i) Maximum Expenditures

Section 113 Withholdings

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PART E--PAYMENTS

Section 121 Payment Methods

Section 122 Amount of Payments to Local Educational Agencies

Section 123 Adjustments Where Necessitated by Appropriations

Section 124 Payments for State Administration

PART F--GENERAL PROVISIONS

Section 134 Judicial Review

Section 135 National Advisory Council

Section 136 Limitation on Grant to Puerto Rico

Section 137 Definitions

[Tentative Draft]

A BILL

To revise title I of the Elementary and Secondary Education Act of 1965 to clarify its provisions without making substantial changes therein

That title I of the Act entitled "An Act to strengthen and improve educational quality and educational opportunities in the Nation's elementary and secondary schools", approved April 11, 1965, as amended (Public Law 89-10), is amended to read as follows:

"Title I - Financial Assistance to Meet Special Educational Needs of Children

"Declaration of Policy

"Sec. 1. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children. Further, in recognition of the special educational needs of children of certain migrant parents, of Indian children and of handicapped or neglected or delinquent children, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to help meet the special educational needs of such children.

"Duration of Assistance

"Sec. 2. During the period beginning July 1, 1973, and ending September 30, 1978, the Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for grants made on the basis of entitlements created under this title.

"Part A - Programs Operated by Local Educational Agencies

"Subpart 1 - Basic Grants

"Grants - Amount and Eligibility

"Sec. 11. (a) Amount of Grants--(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under part E (other than payments under such part to jurisdictions excluded from the term 'State' by this subsection, and payments pursuant to section 81), and there is authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1973 for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(2) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (A) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States. In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under the two preceding sentences for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with basic criteria prescribed by the Commissioner.

"(3)(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

"(C) The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) by 40 per centum of (i) the average per pupil expenditure in Puerto Rico or (ii) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"(4) For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(b) Minimum Number of Children to Qualify--A local educational agency shall be eligible for a basic grant for a fiscal year under this part only if it meets the following requirements with respect to the number of children counted under subsection (c):

"(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

"(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

"(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies for all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

"(c) Children to be Counted--(1) The number of children to be counted for purposes of this section is the aggregate of (A) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A), (B) two-thirds of the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), and (C) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

'(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

"(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the second calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.

"(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under paragraph (A) of this subsection) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

"(d) Program for Indian Children--(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title, with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

"(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payments shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 3 of this part and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of subpart 3 of this part and section 102(a)(3).

"Treatment Of Earnings For Purposes Of Aid To Families With Dependent Children

"Sec. 12. Nothwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

"Subpart 2 - Special Incentive Grants

"Maximum Entitlement

"Sec. 21. (a) For each fiscal year, each State shall be entitled to a special incentive grant if such State has an effort index for the second preceding fiscal year that exceeds the national effort index for such year.

"(b) The maximum amount of a special incentive grant for which a State is eligible for any fiscal year shall be determined by multiplying the amount of $1 for each 0.01 per centum by which the effort index of that State for the second preceding fiscal year exceeds the national effort index for such year times the aggregate number of children counted for the purposes of entitled local educational agencies within such State to basic grants in accordance with sections 11(a)(2) and subparts 1, 2, and 3 of part B except that no State shall be eligible to receive a special incentive grant under this part in an amount in excess of 15 per centum of the total amount available for grants under this subpart.

"(c) For the purpose of this section the term 'effort index' when applied to States, means the per centum expressing the ratio of expenditures from all non-Federal sources in a State for public elementary and secondary education to the total personal income in such State, and the term 'national effort index' means the per centum expressing the ratio of such expenditures in all States to the total personal income in all States; and the term 'State' means the fifty States and the District of Columbia.

"Application; Use of Funds

"Sec. 22. Any State desiring the special incentive grant to which it is entitled under this subpart for any fiscal year shall make application therefor, in accordance with the requirements set forth in Sections 101 and 102 of part C, to the Commissioner. Such application shall be submitted at such time and contain such information as the Commissioner shall require by regulation and shall contain a statement of such policies and procedures as will insure that funds granted to the State under this part will be (1) made available to local educational agencies within that State which have the greatest need for assistance under this title, and (2) used, in accordance with the applicable provisions of this title, for programs and projects designed to meet the special educational needs of educationally deprived children.

"Subpart 3 - Program Requirements and Application

"Application

"Sec. 31. A local educational agency which desires to receive a distribution from its State educational agency of funds provided under this title shall submit an application setting forth a plan which provides, subject to such basic criteria as the Commissioner may prescribe, for the use of such funds in a manner which meets the requirements of this subpart. The State educational agency may approve any such application which it determines meets such requirements.

"Children To Be Served

"Sec. 32. (a) General Eligibility Provisions--Except as provided in subsections (b) and (c), a local educational agency may use funds received under this title for educationally deprived children in school attendance areas having high concentrations of children from low-income families.

"(b) Exceptions for Use in Certain Schools--A local educational agency may use funds received under this title for educationally deprived children who are in a school of such agency which is not located in a school attendance area referred to in subsection (a), but at which the proportion of children in actual average daily attendance who are from low-income families is substantially the same as the proportion of such children in such an area of that agency.

"(c) Continuation of Eligibility--Where, for a fiscal year, a school attendance area does not meet the requirement of subsection (a) of this section, but did meet such requirement in either of the two preceding fiscal years, that school attendance area shall be considered to meet such requirement for that fiscal year.

"Requirements for Design and Implementation of Programs

"Sec. 33. (a) Purpose of Program--A local educational agency may use funds received under this title only for programs and projects which are designed to meet the special educational needs of the children referred to in section 32. Such programs and projects may include the acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, and, where necessary, the construction of school facilities, and planning for such programs and projects.

"(b) Sufficient Size, Scope and Quality--A local educational agency may use funds received under this title only for programs and projects which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs referred to in subsection (a), and to this end such programs and projects must involve an expenditure of not less than $2,500, except that a State educational agency may reduce such $2,500 requirement for a local educational agency if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for such local educational agency to join effectively with other local educational agencies for the purpose of meeting the requirement.

"(c) Evaluations--A local educational agency may receive funds under this title only if effective procedures are in existence, including provisions for appropriate objective measurements of educational achievement, for evaluating at least annually the effectiveness of programs and projects assisted under this title in meeting the special educational needs of the children referred to in section 32.

"(d) Information Dissemination--A local educational agency may receive funds under this title only if effective procedures are in existence for acquiring and disseminating to teachers and administrators significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

"(e) Training of Education Aides--A local educational agency may receive funds under this title for programs and projects involving educational aides only if it has in effect well-developed plans providing for coordinated programs of training in which education aides and the professional staff whom they are assisting will participate together.

"(f) Control of Funds--A local educational agency may receive funds under this title only if control of such funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in this title, and only if a public agency will administer such funds and property.

"(g) Planning--A local educational agency may use funds received under this title for planning only if (1) the planning relates directly to programs or projects to be carried out under this title and has resulted, or is reasonably likely to result, in a program or project to be assisted under this title, and (2) such funds are needed because of the innovative nature of the program or project or because such agency lacks the resources necessary to plan adequately for programs and projects to be assisted under this title. The amount a local educational agency may use for plans for any fiscal year may not exceed 1 per centum of the amount determined for that agency for that year pursuant to section 11 or $2,000, whichever is greater.

"(h) Construction--A local educational agency may use funds received under this title for projects for construction of school facilities only if--

"(1) the project is not inconsistent with overall State plans for the construction of school facilities and the requirements of section 433 of the General Education Provisions Act are complied with on all such projects.

"(2) in developing plans for such facilities due consideration has been given to compliance with such standards as the Secretary may prescribe or approve in order to insure that facilities constructed with the use of Federal funds under this title are, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by, handicapped persons, and

"(3) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(i) Jointly Operated Programs--Two or more local educational agencies may, at their option, enter into an agreement for carrying out jointly operated programs and projects assisted under this title.

"Parental Involvement

"Sec. 34. (a) Establishment of Advisory Councils--A local educational agency may receive funds under this title only if it establishes an advisory council for its entire school district and an advisory council for each school attendance area served by a program or project assisted under this title. Each such advisory council shall (1) have as a majority of its members parents of the children eligible to be served, and (2) be composed of members selected by the parents in each school attendance area.

"(b) Responsibilities of Advisory Councils--Each local educational agency shall give each advisory council which it establishes under subsection (a) responsibility for advising it in the planning for, and the implementation and evaluation of, its programs and projects assisted under this title.

"(c) Access to Information--Each local educational agency shall provide each advisory council which it establishes under subsection (a) with access to appropriate information concerning its programs and projects assisted under this title, in accordance with regulations of the Commissioner.

"Funds Allocation

"Sec. 35. (a) Maintenance of Effort--(1) Except as provided in paragraph (2), a local educational agency may receive funds under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

"(2)(A) In any case in which exceptional circumstances exist with respect to a local educational agency, the Commissioner may, in accordance with the provisions of this subparagraph, waive, for one fiscal year only with respect to such local educational agency, the requirement of paragraph (1) if he determines such waiver to be equitable in order to reflect such circumstances, including those resulting from decreasing enrollments or fiscal resources of the relevant local educational agency or the State, or both. In any case in which a waiver under this subparagraph is granted, the Commissioner shall, for one fiscal year only, reduce the amount of the Federal payment for the current fiscal year in the exact proportion to which the fiscal effort per student of that agency or the amount expended by that agency was less than 100 percent for the second preceding fiscal year as required by paragraph (1).

"(B) In any case in which very exceptional circumstances exist with respect to a local educational agency, the Commissioner may waive for one fiscal year only, with respect to such local educational agency the requirement of paragraph (1) if he determines such waiver to be equitable in order to reflect such circumstances, including those from decreasing enrollments or fiscal resources of such local educational agency.

"(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection.

"(b) Use of Funds Limited to 'Excess Costs'--A local educational agency may use funds received under this title only for the excess costs of programs and projects referred to in section 33 (a). As used in this subsection, the term 'excess costs' means those costs directly attributable to programs and projects which exceed the average per pupil expenditure of a local educational agency in the most recent year for which satisfactory data are available for pupils in the grade or grades included in such programs or projects. At the option of a local educational agency, such term need not include expenditures for any State or local special programs for educationally deprived children which are similar to programs assisted under this title, or expenditures for bilingual programs or special education for handicapped children or children with specific learning disabilities, if such expenditures for bilingual education and special education are used to provide, to children of limited English-speaking ability and handicapped children, and children with specific learning disabilities who reside in project areas, services which are comparable to those provided to similarly disadvantaged children residing in non-project areas.

"(c) Federal Funds to Supplement, Not Supplant, Non-Federal Funds--A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this title, and in no case may such funds be so used as to supplant such funds from non-Federal sources.

"(d) Comparability of Services--A local educational agency may receive funds under this title only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title. Each local educational agency shall report on or before July 1 of each year with respect to its compliance with this subsection.

"Accountability

"Sec. 36. (a) Reporting--Each local educational agency which receives funds under this title shall make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, including information relating to the educational achievement of students participating in programs and projects assisted under this title.

"(b) Recordkeeping--Each local educational agency which receives funds under this title shall keep such records and afford such access thereto as the State educational agency may find necessary to assure the correctness and verification of the reports required under subsection (a).

"(c) Access to Information--Each local educational agency which applies for or receives funds under this title shall make the application and all pertinent documents related thereto available to parents and other members of the general public and shall make all evaluations and reports required under subsection (a) public information.

"Individualized Plans

"Sec. 37. It is the intent of the Congress to encourage, where feasible, the development for each educationally deprived child participating in a program under this title of an individualized written educational plan (maintained and periodicably evaluated), agreed upon jointly by the local educational agency, a parent or guardian of the child, and, when appropriate, the child.

"Participation of Children Enrolled in Private Schools

"Sec. 38. (a) General Requirements--To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirements of Section 32, subsections (a), (b), and (f) of section 33 and subsections (b), and (c) of section 35.

"(b) By-Pass Provision-- (1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(2) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

"(3) When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under this title.

"(4)(A) The Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least sixty days notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

"(B) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(C) The findings of fact by the Commissioner , if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) Upon the filing of such petition, the court shall have jursidiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"Part B - Programs Operated By State Agencies

"Subpart 1 - Programs for Migratory Children

"Grants - Entitlement and Amount

"Sec. 51. (a) Entitlement--A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen which meet the requirements of section 52.

"(b) Amount of Grant--Except as provided in sections 81 and 82, the total grants which shall be made available for use in any State (other than Puerto Rico) for this subpart shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by (1) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and (2) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under section 52, the Commissioner shall allocate such excess, to the extent necessary, to other States whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. The total grant which shall be made available for use in Puerto Rico shall be arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

"Program Requirements

"Sec. 52. (a) Requirements for Approval of Applications--The Commissioner may approve such an application only upon his determination-

"(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate these programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

"(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part [illegible] of title III of the Economic Opportunity Act of 1964;

"(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of subpart 3 of part A, other than sections 32, 34, and 38 thereof; and

"(4) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this clause will not detract from the operation of programs and projects described in paragraph (1) of this subsection after considering funds available for this purpose.

"(b) Continuation of Migrant Status --For purposes of this subpart, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this section. Such children who are presently migrant, as determined pursuant to regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this subsection.

"(c) By-Pass Provision--If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

"Subpart 2 - Programs for Handicapped Children

"Amount and Eligibility

"Sec. 61. (a) Eligibility for Grant--A State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), shall be eligible to receive a grant under this subpart for any fiscal year.

"(b) Amount of Grant--Except as provided in sections 81 and 82, the grant which a State agency referred to in subsection (a) (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil exepnditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States), multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"(c) Counting of Children Transferring from State to Local Programs--In the case where such a child leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in section 62.

"Program Requirements

"Sec. 62. A State shall use the payments made under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children. Such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections 32, 34, 35(d), and 38 thereof. The State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) of section 61 will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

"Subpart 3 - Programs for Neglected and Delinquent Children

"Amount and Entitlement

"Sec. 71. (a) Entitlement to Grants--A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

"(b) Amount of Grant--Except as provided in sections 81 and 82, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this subpart shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"Program Requirement

"Sec. 72. A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections 32, 34, 35(d), and 38 thereof.

"Subpart 4 - General Provisions For State
Operated Programs

"Reservation Of Funds For Territories

"Sec. 81. There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 per centum of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.

"Minimum Payments For State Operated Programs

"Sec. 82. No State shall receive in any fiscal year prior to July 1, 1978, pursuant to subparts 1, 2, or 3 of this part an amount which is less than 100 per centum of the amount which that State received in the prior fiscal year pursuant to the comparable sections of this title as in effect immediately preceding the enactment of the [this]__________ Act or the comparable subpart of this part, whichever was in effect for such prior fiscal year.

"Part C - State Administration of Programs and Projects Assisted Under This Title

"Requirement for Submission and Approval of Application

"Sec. 101. Any State desiring to participate under this title (except with respect to the program provided for in subpart 1 of part B relating to migratory children) shall submit through its State educational agency to the Commissioner an application, in such detail as the Commissioner deems necessary, which contains the assurances required under section 102, and assurances that the applicable requirements of the General Education Provisions Act will be complied with. The Commissioner shall approve an application which meets the requirements of this seciton.

"Required Assurances

"Sec. 102. Each application submitted under section 101 shall provide satisfactory assurance-

"(1) that, except as provided in section 124, payments under this title will be used only for programs and projects which have been approved by the State educational agency pursuant to subpart 3 of part A and which meet the applicable requirements of that subpart and of subparts 2 and 3 of part B and that such agency will in all other respects comply with the provisions of this title and the General Education Provisions Act, including the enforcement of any obligations imposed upon a local educational agency under subpart 3 of part A and the State agency under subpart 2 and 3 of part B;

"(2) that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to local educational agencies and to State agencies) under this title; and

"(3) that the State educational agency will make to the Commissioner (A) periodic reports (including the results of objective measurements required by section 33(c) and of research and replication studies) evaluating the effectiveness of payments under this title and of particular programs assisted under it in improving the educational attainment of educationally deprived children, and (B) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this title (including such reports as he may require to determine the amounts which local educational agencies and State agencies of that State are eligible to receive for any fiscal year), and assurance that such agency will keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

"Prohibition on Consideration of Federal Aid in Determining State Aid

"Sec. 103. No payments shall be made under this title for any fiscal year to a State which has taken into consideration payments under this title in determining the eligibility of any local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the preceding fiscal year.

"Opportunity For A Hearing

"Sec. 104. A State educational agency shall not finally disapprove in whole or in part any application for funds under part A or under subpart 2 or subpart 3 of part B without first affording the local educational agency or other applicant submitting the application reasonable notice and opportunity for a hearing.

"Part D - Federal Administration of Programs and Projects Assisted Under Title

"Applicability

"Sec. 111. In addition to other requirements contained in this part, the requirements of the General Education Provisions Act which relate to Federal administration of elementary and secondary education programs shall apply to programs carried out under this title.

"Program Evaluation

"Sec. 112. (a) Independent Evaluations--The Commissioner shall provide for independent evaluations which describe and measure the impact of programs and projects assisted under this title. Such evaluations may be provided by contract or other arrangements, and all such evaluations shall be made by competent and independent persons, and shall include, whenever possible, opinions obtained from program or project participants about the strengths and weaknesses of such programs and projects.

"(b) Development and Publication of Standards--The Commissioner shall develop and publish standards for evaluation of program or project effectiveness in achieving the objectives of this title.

"(c) Jointly Sponsored Studies--The Commissioner shall, where appropriate, consult with State agencies in order to provide for jointly sponsored objective evaluation studies of programs and projects assisted under this title within a State.

"(d) Evaluation Models--The Commissioner shall provide to State educational agencies, models for evaluations of all programs conducted under this title, for their use in carrying out their functions under section 102, which shall include uniform procedures and criteria to be utilized by local educational agencies and State agencies, as well as by the State agency in the evaluation of such programs.

"(e) Technical Assistance--The Commissioner shall provide such technical and other assistance as may be necessary to State educational agencies to enable them to assist local educational agencies and State agencies in the development and application of a systematic evaluation of programs in accordance with the models developed by the Commissioner.

"(f) Specification of Objective Criteria--The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques (such as longitudinal studies of children involved in such programs) and methodology (such as the use of tests which yield comparable results) for producing data which are comparable on a statewide and nationwide basis.

"(g) Report to Congress--The Commissioner shall make a report to the respective committees of the Congress having legislative jurisdiction over programs authorized by this title and the respective Committees on Appropriations no later than February 1 of each calendar year concerning the results of evaluations of programs and projects required under this section, which shall be comprehensive and detailed, as up-to-date as possible, and based to the maximum extent possible on objective measurements, together with other related findings and evaluations and his recommendations with respect to legislation.

"(h) Information Dissemination--The Commissioner shall also develop a system for the gathering and dissemination of results of evaluations and for the identification of exemplary programs and projects, or of particularly effective elements of programs and projects, and for the dissemination of information concerning such programs and projects or such elements thereof to State agencies and local educational agencies responsible for the design and conduct of programs and projects under this title, and to the education profession and the general public.

"(i) Maximum Expenditures--The Commissioner is authorized, out of funds appropriated to carry out this title in any fiscal year, to expend such sums as may be necessary to carry out the provisions of this section, but not to exceed one half of 1 per centum of the amount appropriated for such programs. In carrying out the provisions of this section, the Commissioner shall place priority on assisting States, local educational agencies, and State agencies to conduct evaluations and shall, only as funds are available after fulfilling that purpose, seek to conduct any national evaluations of the program.

"Withholdings

"Sec. 113. Whenever the Commissioner, after reasonable notice and opportunity for hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in the applications of that State approved under section 52 or 101 the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this title, or payments by the State educational agency under this title shall be limited to local educational agencies and State agencies not affected by the failure, as the case may be.

"Claims Collection

"Sec. 114. The Secretary or his designee shall attempt to collect all claims of the United States arising out of activities carried on under this title, as provided in the Federal Claims Collection Act of 1966.

"Opportunity For A Hearing

"Sec. 115. The Commissioner shall not finally disapprove an application under section 52 or under section 101 except after reasonable notice and opportunity for a hearing to the State educational agency.

"Part E - Payments

"Payment Methods

"Sec. 121. The Commissioner shall, subject to the provisions of section 123, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

"Amount of Payments to Local Educational Agencies

"Sec. 122. From the funds paid to it pursuant to section 121 each State educational agency shall distribute to each local educational agency of the State which is not ineligible by reason of section 11(b) and which has submitted an application approved pursuant to section 31 the amount for which such application has been approved, except that this amount shall not exceed the amount determined for that agency pursuant to section 11.

"Adjustments Where Necessitated By Appropriations

"Sec. 123. If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such section. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this title for such year, the allocations to such agencies and allocations under subpart 2 of part A shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated, except that entitlements under such subpart 2 shall be taken into consideration only to the extent that appropriations for such title I exceed $1,396,975,000 for any fiscal year and such entitlements shall not exceed $50,000,000 in any fiscal year. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 80 per centum of its allocation for such year. If the aggregate of the amounts to which all States are entitled under such subpart 2 exceeds $50,000,000 the entitlement of each State shall be reduced ratably until such aggregate does not exceed $50,000,000 in such fiscal year.

In case additional funds become available for making payments under this title for that year, such reduced amounts shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State, and (2) State educational agencies referred to in subpart 1 of part B must file applications. If the maximum grant a local educational agency or an agency referred to in subpart 1 of part B would receive (after any ratable reduction which may have been required under the first sentence of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of paragraph (2) of section 11(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

"Payments for State Administration

"Sec. 124. The Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title (including technical assistance for the measurements and evaluations required by section 33(c)), except that the total of such payments in any fiscal year shall not exceed-

"(1) 1 per centum of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under this title; or

"(2) $150,000, or $25,000 in the case of Guam, American Samoa, the Virgin Isalnds, or the Trust Territory of the Pacific Islands,

whichever is the greater.

"Part F - General Provisions

"Judicial Review

"Sec. 134. (a) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under subpart 1 of part B or section 101 or with his final action under section 113, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(b) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"National Advisory Council

"Sec. 135. (a) There shall be a National Advisory Council on the Education of Disadvantaged Children (hereinafter in this section referred to as the "National Council") consisting of fifteen members appointed by the President, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, for terms of three years, except that (1) in the case of initial members, five shall be appointed for terms of one year each and five shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be only for such terms as remain unexpired. The National Council shall meet at the call of the Chairman.

"(b) The National Council shall review and evaluate the administration and operation of this title, including its effectiveness in improving the educational attainment of educationally deprived children, including the effectiveness of programs to meet their occupational and career needs, and make recommendations for the improvement of this title and its administration and operation. These recommendations shall take into consideration experience gained under this and other Federal educational programs for disadvantaged children and, to the extent appropriate, experience gained under other public and private educational programs for disadvantaged children.

"(c) The National Council shall make such reports of its activities, findings, and recommendations (including recommendations for changes in the provisions of this title) as it may deem appropriate and shall make an annual report to the President and the Congress not later than March 31 of each calendar year. Such annual report shall include a report specifically on which of the various compensatory education programs funded in whole or in part under the provisions of this title, and of other public and private educational programs for educationally deprived children, hold the highest promise for raising the educational attainment of these educationally deprived children. The President is requested to transmit to the Congress such comments and recommendations as he may have with respect to such report. Subject to section 448(b) of the General Education

Provisions Act, the National Council shall continue to exist until October 1, 1978.

"Limitation on Grant to Puerto Rico

"Sec. 136. Notwithstanding any provisions of part A or of subpart 1, 2, or 3 of part B of this title, the amount the Commonwealth of Puerto Rico is eligible to receive under such part or subpart for the fiscal year ending September 30, 1978, shall not exceed 75 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such part or subpart but for this section.

"Definitions

"Sec. 137. Except as otherwise provided, for purposes of this title-

"(1) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(2) The term 'school attendance area' means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

"(3) The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

"(4) The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

"(5) The term 'State' means a State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

"(6) The terms 'Commissioner of Education' and 'Commissioner' means the United States Commissioner of Education.

"(7) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(8) The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(9) The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

"(10) The term 'current expenditures' means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under titles I, II, or III of this Act.

"(11) Average daily attendance shall be determined in accordance with State law, except that not withstanding any other provision of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

"(12) The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

"(13) The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities, "(14) The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"(15) The term ' equipment' includes machinery, utilities, and building equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

"(16) The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law, and the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(17) The term 'average per pupil expenditure means in the case of a State or the United States, the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

Sec. 2. (a) Section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first-Congress), is amended--

(1) by striking out, "except as used in title II", where it appears in paragraph (2);

(2) by striking out, "except that for purposes of title II such term does not include any education provided beyond grade 12", where it appears in paragraph (4);

(3) by striking out, "title II of this act or title II or III" where it appears in paragraph (5), and inserting "title I, II, or III of".

(4) by striking out, "(A)" where it appears in paragraph (6) and by striking out subparagraph (B) of such paragraph;

(5) by striking out", and for purposes of title II, such term includes the Trust Territory of the Pacific Islands";

(6) by striking out paragraphs (15), (16), and (17).

Sec. 3. (a) Title II of the Act of September 30, 1950 (Public Law 874, Eighty-first-Congress), is repealed.

(b) Section 431A(b) of the General Education Provisions Act is amended by striking out paragraph (2) thereof.

Sec. 4. Section 101(a)(10) of the Education Amendments of 1974 is amended by striking out "part A" and inserting in lieu thereof "subpart 1 of part A and part B".

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

MEMORANDUM

TO: House Subcommittee on Elementary, Secondary, and Vocational Education

FROM: Legal Standards Project, Lawyers' Committee For Civil Rights Under Law

SUBJECT: Draft Reorganization of Title I Statute

DATE: December 16, 1977

Enclosed is a draft reorganization of the Title I, ESEA Statute. The draft is designed to achieve greater clarity, consistency, and coherence without making any substantive changes to the existing law.

In addition, we are enclosing three documents designed to facilitate your analysis of our draft. The first document is a table providing corresponding references between the existing statute and the draft reorganization. The second document is an annotated copy of our draft reorganization. The annotations in the left hand margin indicate the technical changes to the existing statute which the draft incorporates and recommended changes to the existing law which should be made to correct what we believe are technical errors. The right hand margin of the annotated draft contains references to corresponding sections of existing law.

Finally, we have enclosed a revised copy of our November 14, 1977 memorandum. As you may recall, this memorandum discusses the rationale for the major changes to the existing law contained in our proposed reorganization.

TABLE OF CORRESPONDING SECTIONS

Reorganization	Present Organization
Title I Financial Assistance to Meet Special Educational Needs of Children	Title I-Financial Assistance to Local Educational Agencies for the Education of Children of Low-Income Families
Section 1 Declaration of Policy	Section 101 Declaration of Policy
Section 2 Duration of Assistance	Section 102 Duration of Assistance
Part A - Programs Operated By Local Educational Agencies Subpart 1 - Basic Grants	Part A - Basic Grants Subpart 1-Grants to Local Educational Agencies
Section 11 - Grants - Amount and Eligibility	Section 103 - Grants - Amount and Eligibility
Section 11(a) - Amount of Grants	
Section 11(b) - Minimum Number of Children to Qualify	
Section 11(c) - Children to Be Counted	
Section 11(d) - Program for Indian Children	
Section 12 - Treatment of Earnings For Purposes of Aid to Families With Dependent Children	Section 149 - Treatment of Earnings For Purposes of Aid to Families With Dependent Children
Subpart 2 - Special Incentive Grants	Part B - Special Incentive Grants
Section 21 - Maximum Entitlement	Section 126 - Maximum Entitlements; Section 128 - Definitions
Section 22 - Application; Use of Funds	Section 127 - Application; Use of Funds
Subpart 3 - Program Requirements and Application	Part D - General Provisions
Section 31 - Application	Section 141 - Application
Section 32 - Children to be Served	
Section 32(a) - General Eligibility Provisions	Section 141(a)(1)(A)
Section 32(b) - Exceptions for Use in Certain Schools	Section 141(a)(1)(A)

Section 32(c) - Continuation of Eligibility	Section 141(a)(13)
Section 33 - Requirements For Design and Implementation of Programs	
Section 33(a) - Purpose of Program	Section 141(a)(1)
Section 33(b) - Sufficient Size, Scope, and Quality	Section 141(a)(1)(B)
Section 33(c) - Evaluations	Section 141(a)(6)
Section 33(d) - Information Dissemination	Section 141(a)(10)
Section 33(e) - Training of Aides	Section 141(a)(12)
Section 33(f) - Control of Funds	Section 141(a)(3)(A)
Section 33(g) - Planning	Section 141(a)(5)
Section 33(h) - Construction	Sections 141(a)(4),(9), and (11)
Section 33(i) - Jointly Operated Programs	Section 141(a)(1)(B)
Section 34 - Parental Involvement	
Section 34(a) - Establishment of Advisory Councils	Section 141(a)(14)(A) and (B)
Section 34(b) - Responsibilities of Advisory Councils	Section 141(a)(14)(C)
Section 34(c) - Access to Information	Section 141(a)(14)(D)
Section 35 - Funds Allocation	
Section 35(a) - Maintenance of Effort	Section 143(c)(2); Section 431A(b)(2)(A) and(B) of GEPA
Section 35(b) - Use of Funds Limited to 'Excess Costs'	Section 141(a)(1); Section 403(17) of P.L. 81-874
Section 35(c) - Federal Funds to Supplement, Not Supplant Non-Federal Funds	Section 141(a)(3)(B)
Section 35(d) - Comparability of Services	Section 141(a)(3)(C)
Section 36 - Accountability	
Section 36(a) - Reporting	Section 141(a)(7)
Section 36(b) - Recordkeeping	Section 141(a)(7)
Section 36(c) - Access to Information	Section 141(a)(8)
Section 37 - Individualized Plans	Section 141(b)
Section 38 - Participation of Children Enrolled in Private Schools	Section 141(a)(2); Section 141A - Participation of Children Enrolled in Private Schools
Section 38(a) - General Requirements	Section 141A(a)
Section 38(b) - By-Pass Provision	Section 141A(b)

Part B - Programs Operated By State Agencies	Subpart 2 - State Operated Programs
Subpart 1 - Programs for Migratory Children	
Section 51 - Grants-Amount and Eligibility	Section 122(a)(1) and (b) - Programs for Migratory Children
Section 51(a) - Entitlement to Grant	Section 122(a)
Section 51(b) - Amount of Grant	Section 122(b)
Section 52 - Program Requirements	
Section 52(a) - General Requirements	Section 122(a)(1)
Section 52(b) - Continuation of Migrant Status	Section 122(a)(3)
Section 52(c) - By-Pass Provision	Section 122(a)(2)
Subpart 2 - Programs for Handicapped Children	Section 121 - Programs for Handicapped Children
Section 61 - Amount and Eligibility	Section 121(a) and (b)
Section 61(a) - Eligibility for Grant	Section 121(a)
Section 61(b)- Amount of Grant	Section 121(b)
Section 61(c) - Counting of Children Transferring From State to Local Programs	Section 121(d)
Section 62 - Program Requirements	Section 121(c)
Subpart 3 - Programs for Neglected and Delinquent Children	Section 123 - Programs for Neglected and Delinquent Children
Section 71 - Amount and Eligibility	
Section 71(a) - Entitlement to Grant	Section 123(a)
Section 71(b) -Amount of Grant	Section 123(b)
Section 72 - Program Requirements	Section 123(c)
Subpart 4 - General Provisions For State Operated Programs	
Section 81 - Reservation of Funds for Territories	Section 124 - Reservation of Funds for Territories
Section 82 - Minimum Payments for State Operated Programs	Section 125 - Minimum Payments for State Operated Programs
Part C - State Administration of Programs and Projects Assisted Under This Title	

Section 101 - Requirement for Submission and Approval of Application	Section 142 - Assurances from States
Section 102 - Required Assurances	Section 142
Section 103 - Prohibition on Consideration of Federal Aid in Determining State Aid	Section 143(c)(1)
Section 104 - Opportunity for A Hearing	Section 141(c)
Part D - Federal Administration of Programs and Projects Assisted Under Title	
Section 111 - Applicability	
Section 112 - Program Evaluation	Section 151 - Program Evaluation
Section 112(a) - Independent Evaluations	Section 151(a)
Section 112(b) - Development and Publication of Standards	Section 151(b)
Section 112(c) - Jointly Sponsored Studies	Section 151(c)
Section 112(d) - Evaluation Models	Section 151(d)
Section 112(e) - Technical Assistance	Section 151(e)
Section 112(f) - Specification of Objective Criteria	Section 151(f)
Section 112(g) - Report to Congress	Section 151(g)
Section 112(h) - Information Dissemination	Section 151(h)
Section 112(i) - Maximum Expenditure	Section 151(i)
Section 113 - Withholdings	Section 146 - Withholdings
Section 114 - Claims Collection	
Section 115 - Opportunity of A Hearing	Section 122 (last sentence) and Section 142(b)
Part E - Payments	Section 143 - Payments
Section 121 - Payment Methods	Section 143(a)(1)
Section 122 - Amount of Payments to Local Educational Agencies	Section 143(a)(2)

Section 123 - Adjustments Where Necessitated By Appropriations	Section 144 - Adjustments Where Necessitated By Appropriations
Section 124 - Payments for State Administration	Section 143(b)
Part F - General Provisions	
Section 134 - Judicial Review	Section 147 - Judicial Review
Section 135 - National Advisory Council	Section 148 - National Advisory Council
Section 136 - Limitation on Grants to Puerto Rico	Section 843(d) - Education Amendments of 1974
Section 137 - Definitions	Section 403 of P.L. 81-874
Section 137(1) - Local Educational Agency (reference to State agency deleted)	Section 403(6)(B)
Section 137(2) - Attendance Area	
Section 137(3) - Project Area	
Section 137(4) - State Educational Agency	Section 403(7)
Section 137(5) - State	Section 403(8)
Section 137(6) - Commissioner of Education	Section 403(9)
Section 137(7) - Secretary	Section 801(i) of ESEA
Section 137(8) - Parent	Section 403(3)
Section 137(9) - Free Public Education	Section 403(4)
Section 137(10) - Current Expenditures	Section 403(5)
Section 137(11) - Average Daily Attendance	Section 403(10)
Section 137(12) - County	Section 403(11)
Section 137(13) - Construction	Section 403(12)
Section 137(14) - School Facilities	Section 403(13)
Section 137(15) - Equipment	Section 403(14)
Section 137(16) - Elementary Schools and Secondary Schools	Section 403(15)
Section 137(17) - Average Per Pupil Expenditure	Section 403(16)

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

MEMORANDUM

TO: Subcommittee on Elementary, Secondary, and Vocational Education

FROM: Legal Standards Project, Lawyers' Committee For Civil Rights Under Law

SUBJECT: Reorganization of Title I Statute (Draft Outline)

DATE: Revised November 14, 1977, Revised Again December 15, 1977

Attached is a draft outline for reorganizing the Title I statute. The proposed reorganization clarifies the statute, primarily by collecting scattered provisions on similar topics in one place and labeling those topics for quicker reference. The proposed reorganization does not add to, subtract from, or in any way modify existing policies. The outline implements nine suggested changes in the organization of the statute, which are discussed below.

1. Include a Section in the Title I Legislation for Definitions-- "Title I" was initially enacted as Title II of P.L. 81-874 (Impact Aid). Although "Title I" has been officially redesignated "Title I of ESEA", it is still technically considered Title II of P.L. 81-874. Thus, the definitions applicable only to "Title I of ESEA" are still found in P.L. 81-874 and are referred to as definitions applicable to "Title II." ___/ "Title I of ESEA" does not presently have a general section for definitions. We are proposing to sever Title I of ESEA from the Impact Aid Legislation. A new section entitled, "Definitions" will be added to the Title I statute.

2. Include a Separate Part for Each of the Following Subject Areas: "Programs Operated by LEAs", "State Operated Programs", "State Administration", "Federal Administration", "Payment", and "General" Provisions. The current organization of the statute reflects the

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___/ For example, the definition of the term "excess costs" (Section 403(17) of P.L. 81-874) includes the following introductory phrase: "For purposes of Title II 'excess costs means...."

practice of assigning headings only to Parts, Subparts, Sections and Subsections. Approximately fourteen LEA requirements appear in Section 141. Presently, they do not have separate headings identifying them. The proposed reorganization assigns a heading to each Subsection.

3. Reorganize LEA Program Requirements Into Eight Sections Along Functional Lines--Presently LEA program requirements are not organized to facilitate clarity. Related provisions are scattered throughout Section 141. For example the general school attendance area eligibility provisions are in Section 141(a)(1)(A); whereas the "formerly eligible" exemption to the general eligibility rules appears in Section 141(a)(13). A second example concerns the funds allocation provisions. Section 141(a)(1) contains the excess costs provision whereas Section 141(a)(3)(B) and (C) contain the supplement, not supplant and comparability provision. It should also be noted that Section 141(a)(3)(A) is not a funds allocation provision; rather it concerns the requirement that control of Title I funds be retained by a public agency. Our proposal would locate related requirements under a single Section.

4. Clarify the Purpose and Scope of the Section 141 Requirements. As you know Section 141 contains the requirements LEAs must satisfy in order to receive assistance under Title I. However, when read literally, the introductory paragraph to Section 141 implies that the requirements only apply to the design of programs and not to program implementation. Such an interpretation is also supported by the Section 141's heading--"Application". Although an interpretation that would permit LEAs to implement illegal programs which are legally planned could not be sustained, the statute should make clear that the requirements apply to program implementation as well as program design.

5. Use The Term "Comparability" Once Instead of Three Times--As you know, Section 141(a)(3)(C) includes the so-called "Comparability" provision which generally states that the LEA must provide services in project area schools which are comparable to services provided in non-project area schools. The term "comparable" is used a second time in Section 403(17) of P.L. 81-874, this time to specify the types of state compensatory education program expenditures which may be excluded for purposes of computing comparability, i.e., only "comparable state or local programs for educationally deprived children." We propose to use the word "similar" instead of "comparable" to describe the types of compensatory education programs eligible for this exclusion from comparability. The term "comparable" is used again in Section 403(17) of P.L. 81-874; this time as part of the proviso that before an LEA may exclude state or local funds for handicapped or bilingual programs from "comparability", it must demonstrate that handicapped and bilingual children residing in project areas are provided services which are "comparable" to those provided to such children residing in non-project areas. OE presently requires the preparation of a "mini-comparability" report. As you know the Federal regulations specify the criteria

which LEAs must use to demonstrate Section 141(a)(3)(C) comparability. However, the Federal regulations do not specify the criteria for demonstrating Section 403(17) "mini-comparability". Query,, should we use a term other than comparability to describe what is now referred to as "mini-comparability?"

6. Include Cross References to Relevant Statutes--Presently Title I prescribes three roles which the Commissioner must perform: (a) program evaluation (Section 151), withholding (Section 146) and providing SEAs with an opportunity for a hearing before finally disapproving a state application (Section 142(b)). As you know, GEPA and other Federal Statutes provide additional responsibilities and authority. A cross-reference to other relevant statutes would be helpful. Let us explain by way of illustration. Recently a Deputy Attorney General from a large state, in the course of preparing a defense to a case before the HEW Audit Hearing Board wherein HEW was attempting to recoup misspent funds, informed us that one of the state's primary defenses would be that the Title I statute only authorizes the Commissioner to withhold Title I funds; the federal government is not authorized by the Title I or GEPA to recoup such misspent funds. We referred this person to the Federal Claims Collection Act which provides such authority and the HEW regulations promulgated thereunder. In addition to expressing embarrasement, the Deputy Attorney General wondered why a reference to this other law and the relevant HEW regulations did not appear as part of the Title I legal framework. If a Deputy Attorney General has difficulty understanding which laws are applicable, imagine the problems faced by non-lawyers.

7. Clarify Which Section 141 Requirements (generally applicable to LEAs) are also Applicable to State Programs for Handicapped and Neglected or Delinquent Children--Under the existing legal framework, a local educational agency is defined in Section 403(6) (B)of P.L. 81-874 to include state agencies providing programs for handicapped and neglected or delinquent children.* The question is raised whether and the extent to which the requirements set forth in Section 141 pertaining to "local educational agencies" apply to state programs for handicapped and neglected or delinquent children? OE, placing great significance on the fact that certain subsections of Section 141 include the phrase "school districts" or "school attendance areas" of LEAs, has concluded that subsections which include these phrases are inapplicable to state programs. We concur.

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* The definition also explains that a state agency providing programs for handicapped, neglected or delinquent children will not be considered a local educational agency for "purposes of Sections 203(a)(2), 203(b) and 205(a)(1))." The sections referred to in the previous sentence appeared in the initial legislation and have since been redesignated Sections 103(a)(2), 103(b) and 141 (a)(1)(A), respectively. Thus, these cross-references must be changed.

Applying the above rationale, we conclude that the following subsections are inapplicable to state programs for the handicapped and neglected or delinquent children: Section 141(a)(1)(A) pertaining to school attendance area eligibility; Section 141(a)(2) and 141A pertaining to participation of children attending private schools; Section 141(a)(3)(C) pertaining to comparability of services; Section 141(a)(13) pertaining to the "formerly eligible" exception to the school attendance area eligibility provisions, and Section 141(a)(14) concerning parent involvement. Do you concur?

An additional issue requiring clarification concerns whether OE regulations pertaining to state programs for handicapped and neglected or delinquent children must contain the same standards set forth in the applicable subsections of 141 or may the regulations simply require that the state agency act "consistent with the basic objectives" of the applicable subsections? The latter interpretations would permit the same degree of latitude presently provided by Section 122(a)(1)(C) with respect to state operated programs for migrant children.

We believe that it is confusing to define a "local educational agency" as including a "state agency" providing programs for handicapped and neglected or delinquent children. We propose to delete the state agencies from the definition of LEA and make express reference to these state programs in the Title I statute, where necessary. The most important change required by our proposal would be the addition of sections under the subparts for Handicapped and Neglected and Delinquent Children specifying which requirements in Section 141 are applicable to such state programs.

8. Include Definitions For Terms "Attendance Area" and "Project Area"--We suggest that the longstanding definitions of the terms "school attendance areas" and "Project areas", set forth in the regulations be incorporated into the statute. These phrases appear throughout the legislation. (See, for example, Sections 141(a)(1)(A) and Section 141(a)(3)(C)).

9. Transfer the Exceptions to the Maintenance of Effort Provision From GEPA to Title I--Section 143(c)(2) of Title I contains the maintenance of effort provision. Presently an exception from this provision is contained in Section 431A(b)(2) of GEPA. We suggest that the exception be transferred to the Title I statute so that the reader is aware that the exception to the rule exists.

CURRENT ORGANIZATION OF TITLE I STATUTE

101 Declaration of Policy

102 Duration of Assistance

PART A - BASIC GRANTS

Subpart 1 - Grants to Local Educational Agencies

103 Grants - Amount and Eligibility

Subpart 2 - State Operated Programs

121 -Programs for Handicapped Children

122 -Programs for Migratory Children

123 -Programs for Neglected or Delinquent Children

124 -Reservation of Funds for Territories

125 -Minimum Payments for State Operated Programs

PART B - SPECIAL INCENTIVE GRANTS

126 Maximum Entitlement

127 Application: Use of Funds

128 Definitions

PART C - SPECIAL GRANTS *

131 Eligibility and Maximum Amount of Special Grants

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* Repealed as of July 1, 1975 by Section 101(a)(4)(B) of P.L. 93-380.

PART D - GENERAL PROVISIONS

141	Application
141A	Participation of Children Enrolled in Private Schools
142	Assurances From States
143	Payment
144	Adjustments Where Necessitated By Appropriations
146	Withholdings
147	Judicial Review
148	National Advisory Council
149	Treatment of Earnings for Purposes of Aid to Families With Dependent Children
150	Allocation of Funds Within the School District of a Local Educational Agency
151	Program Evaluation
152	Short Title

REVISED TITLE I STATUTE

Declaration of Policy [presently Section 101]

Duration of Assistance [presently Section 102]

PART A - PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

Subpart 1 - Basic Grant

- Section - Amount and Eligibility [presently Section 103]
- Section - Treatment of Earnings for Purposes of Aid to Families With Dependent Children [presently Section 149]

Subpart 2 - Special Incentive Grants [presently Part B]

- Section - Maximum Entitlement [presently Section 126]
- Section - Application: Use of Funds [presently Section 127]

Subpart 3 - Program Requirements and Application

- Section - Applicability [LEA must submit application; SEA must determine that LEA program *design* satisfies all requirements in this part; and LEA must *implement* programs consistent with the requirements]
- Section - Focus of Programs and Projects
    - Subsection - General Eligibility Provisions [see relevant phrases in Section 141(a)(1)(A) providing that Title I funds must be used for educationally deprived children residing in low-

income areas]

Subsection - Formerly Eligible Provision [presently Section 141(a)(13)]

Section - Program Planning and Implementation

Subsection - Nature of Program [see relevant phrases in Section 141(a)(1) and 141 (a)(1)(A) providing that Title I funds must be used to pay for programs and projects designed to meet the special educational needs of the children specified in Section__]

Subsection - Sufficient Size, Scope and Quality [presently Section 141(a)(1)(B)]

Subsection - Evaluation [presently Section 141(a)(6)]

Subsection - Information Dissemination [presently Section 141(a)(10)]

Subsection - Joint Training [presently Section 141(a) (12)]

Subsection - Control of Funds [presently Section 141 (a)(3)(A)]

Subsection - Planning [presently Section 141(a)(5)]

Subsection - Construction [presently Sections 141 (a)(4), (a)(9), and (a)(11)]

Section - Parent Involvement

Subsection - Organization and Membership [presently Section 141(a)(14)(A) and (B)]

Subsection - Responsibilities [presently Section 141(a)(14)(C)]

Subsection - Access to Information [presently Section 141(a)(14)(D)]

Section - Funds Allocation

Subsection - Maintenance of Effort [presently Section 143(c)(2)]

Subsection - Excess Costs and Supplement, Not Supplant [presently Section 141(a)(1) and 141(a)(3)(B)]

Subsection - Comparability of Services [presently Section 141(a)(3)(C)]

Section - Accountability

Subsection - Reporting [presently Section 141(a)(7)]

Subsection - Recordkeeping [presently Section 141(a)(7)]

Subsection - Access to Information [presently Section 141(a)(8)]

Section - Congressional Preferences [presently Section 141(b)]

Section - Participation of Children Enrolled in Private Schools [combine present Sections 141(a)(2) and 141A]

Subsection - General Requirements [presently Section 141A(a)]

Subsection - By-Pass Provision [presently Section 141A(b)]

PART B - PROGRAMS OPERATED BY STATE AGENCIES

Subpart 1 - Programs for Migratory Children [presently Section 122]

Section - Amount and Eligibility [presently Section 122(b)]

Section - Applicable Requirements [presently Section 122(a)(3) and 122(a)(1), (delete last sentence in 122(a)(1) and move to Part E Section ___).

Section - By-Pass Provision [presently Section 122(a)(2)]

Subpart 2 - Programs For Handicapped Children [presently Section 121]

Section - Amount and Eligibility [presently Sections 121(a), (b) and (d)]

Section - Applicable Requirements [presently Section 121(c). This Section would be modeled after the Section 122(a)(1)(C) which delineates the specific LEA requirements contained in Section 141 which are applicable to migratory programs]

Subpart 3 - Programs for Neglected Or Delinquent Children

Section - Amount and Eligibility [presently Section 123(a) and (b)]

Section - Applicable Requirements [presently Section 123(c) which will be clarified along the lines of Section 122(a)(1)(C)]

PART C - STATE ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Section - Applicability [reference to LEA programs and state programs for handicapped and neglected or delinquent children; cross reference GEPA]

Section - Assurances [presently Section 142(a); add to this Section what is now Section 143(c)(1) concerning the reduction in state aid because of existence of Title I]

Section - Opportunity for a Hearing [presently Section 141(c); add references to state programs for the handicapped, neglected, and delinquent children]

PART D - FEDERAL ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Section - Applicability [cross reference to GEPA]
Section - Program Evaluation [presently Section 151]
Section - Withholding [presently Section 146]
Section - Recoupment [cross reference to the Federal Claims Collection Act of 1966]
Section - Opportunity for a Hearing [presently Sections 122(a)(1) (last sentence), and 142(b)]

PART E - PAYMENT

Section - Payment Methods [presently Section 143(a)(1)]
Section - Amount of Payment for Programs and Projects [presently Section 143(a)(2)]
Section - Adjustments Where Necessitated by Appropriations [presently Section 144]
Section - Amount of Payment for State Administration [presently Section 143(b)(1) and (2)]

PART F - GENERAL PROVISIONS

Section - Judicial Review [presently Section 147]

Section - National Advisory Council [presently Section 148]

Section - Alternative Methods for Allocating Funds Under This Title [presently Section 150]

Section - Treatment of Puerto Rico [Section 843(d) of P.L. 93-380]

Section - Definitions (all applicable definitions contained in Section 403 of P.L. 81-874 and definitions presently appearing in Section 128 of Title I; change definition of "Local Educational Agency" by deleting reference to "state agency" programs for handicapped and neglected or delinquent children.]

Section - Short Title [presently Section 152]

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT
AS REORGANIZED AND AMENDED BY THE
LEGAL STANDARDS PROJECT

Title I--Financial Assistance to Meet Special Educational Needs of Children

Section 1 Declaration of Policy

Section 2 Duration of Assistance

PART A--PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

Subpart 1--Basic Grants

Section 11 Grants--Amount and Eligibility
- (a) Amount of Grants
- (b) Minimum Number of Children to Qualify
- (c) Children to be Counted
- (d) Program for Indian Children

Section 12 Treatment of Earnings for Purposes of Aid to Families with Dependent Children

Subpart 2--Special Incentive Grants

Section 21 Maximum Entitlement

Section 22 Application; Use of Funds

Subpart 3--Program Requirements and Application

Section 31 Application

Section 32 Designating School Attendance Areas
  - *(a) General Provisions*
  - (b) Use of Enrollment Data in Certain Schools
  - (c) Continuation of Eligibility for Certain School Attendance Areas or Schools
  - *(d) Lower Ranked School Attendance Areas or Schools Having Substantially Greater Incidences of Educationally Deprived Children than Higher Ranked Areas or Schools*
  - *(e) Skipping Higher Ranked School Attendance Areas or Schools Receiving Services of the Same Nature and Scope from Non-Federal Sources*

Section 33 Children to be Served
  - *(a) General Provisions*
  - *(b) Continuation of Eligibility for Educationally Deprived Children Who are No Longer in Greatest Need of Assistance*
  - *(c) Continuation of Eligibility for Educationally Deprived Children Transferred to Ineligible Areas in the Same Year*
  - *(d) Skipping Children Determined to be in Greatest Need of Assistance Receiving Services of the Same Nature and Scope from Non-Federal Sources*

Section 34 Requirements for Design and Implementation of Programs
  - (a) Purpose of Program
  - *(b) Assessment of Educational Needs*
  - (c) Planning
  - (d) Sufficient Size, Scope, and Quality
  - *(e) Expenditures Related to Ranking of Eligible School Attendance Areas or Schools*
  - *(f) Coordination*
  - (g) Evaluations
  - (h) Information Dissemination
  - (i) Training of Education Aides
  - (j) Control of Funds
  - (k) Construction
  - (l) Jointly Operated Programs

Section 35 Parental Involvement
  - (a) Establishment of Advisory Councils
  - (b) Responsibilities of Advisory Councils
  - (c) Access to Information

Section 36 Funds Allocation
  - (a) Maintenance of Effort
  - (b) Use of Funds Limited to "Excess Costs"
  - (c) Federal Funds to Supplement, Not Supplant *Regular* Non-Federal Funds
  - (d) *Federal Funds Required to Supplement, Not Supplant Non-Federal Funds for Certain Special State and Local Programs*
  - (e) Comparability of Services *(including a new provision respecting no-wide variance situation)*

Section 37 Accountability
  - (a) *Recordkeeping (including an exemption for state or local programs identical to title I)*
  - (b) Reporting
  - (c) Access to Information

Section 38 Complaint Resolution

Section 39 Individualized Plans

Section 40 Participation of Children Enrolled in Private Schools
  - (a) General Requirements
  - (b) By-Pass Provision

Subpart 4--Exemptions from Certain Program Requirements

Section 41 Exclusions from Excess Costs and Comparability Provisions for Certain Special State and Local Programs
  - *(a) In General*
  - *(b) State and Local Compensatory Education Programs Similar to Title I Programs*
  - *(c) Bilingual Programs or Special Education Programs for Handicapped Children or Children with Specific Learning Disabilities*
  - *(d) Certain State Phase-In Programs*
  - *(e) Advance Determinations by the Commissioner*
  - *(f) Advance Determinations by the State Educational Agency*

Section 42 Limited Exemption to Supplement, Not Supplant Requirement Where Certain Special Programs for Educationally Deprived Children are Fully Funded

Section 43 Schools and Grade-Spans Having High Concentrations of Educationally Deprived Children
(a) Applicability
(b) Optional Inclusion of Children Who are Not Educationally Deprived
(c) Special Supplementary State or Local Funds Excluded from Comparability
(d) Children Attending Private Schools

PART B--PROGRAMS OPERATED BY STATE AGENCIES

Subpart 1--Programs for Migratory Children

Section 51 Grants--Entitlement and Amount
(a) Entitlement
(b) Amount of Grant

Section 52 Program Requirements
(a) Requirements for Approval of Applications
(b) Continuation of Migrant Status
(c) By-Pass Provision

Subpart 2--Programs for Handicapped Children

Section 61 Amount and Eligibility
(a) Eligibility for Grant
(b) Amount of Grant
(c) Counting of Children Transferring from State to Local Programs

Section 62 Program Requirements

Subpart 3--Programs for Neglected and Delinquent Children

Section 71 Amount and Entitlement
(a) Entitlement to Grants
(b) Amount of Grant

Section 72 Program Requirement

Subpart 4--General Provisions for State Operated Programs

Section 81 Reservation of Funds for Territories

Section 82 Minimum Payments for State Operated Programs

PART C--STATE ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Subpart 1--State Applications

Section 101 Submission of State Applications

Section 102 Contents of State Applications

Subpart 2--Duties Imposed on State Educational Agencies

Section 111 Application Approval
- *(a) Requirements for Approval*
- *(b) Payments*
- *(c) Requirement for Hearing*

Section 112 State Rulemaking

Section 113 Technical Assistance and Dissemination of Information

Section 114 Monitoring

Section 115 Complaint Resolution

Section 116 Withholding of Payments
- *(a) Withholding*
- *(b) Notice to Public of State Withholding*
- *(c) Compliance Agreements*
- *(d) Review by the Commissioner*

Section 117 Audits and Audit Resolution
- *(a) Auditing*
- *(b) Audit Resolution*
- *(c) Requirement for Repayment*
- *(d) Review by the Commissioner*
- *(e) Failure to Repay*

Subpart 3--Responsibilities of State Educational Agencies to Commissioner

Section 121 State Management Summary
- *(a) Requirement for*
- *(b) Contents of State Management Summaries*

Section 122 Reporting

Section 123 Recordkeeping, Fiscal Control and Accounting

Section 124 Prohibition on Consideration of Federal Aid in Determining State Aid

PART D--FEDERAL ADMINISTRATION OF PROGRAMS AND PROJECTS ASSISTED UNDER THIS TITLE

Section 131 Applicability

Section 132 Approval of Applications
  (a) Requirement for Approval
  (b) Hearings

Section 133 Program Evaluation
  (a) Independent Evaluations
  (b) Development and Publication of Standards
  (c) Jointly Sponsored Studies
  (d) Evaluation Models
  (e) Technical Assistance
  (f) Specification of Objective Criteria
  (g) Report to Congress
  (h) Information Dissemination
  (i) Maximum Expenditures

Section 134 Complaint Resolution

Section 135 Audits and Audit Resolution
  (a) Auditing
  (b) Audit Resolution and Repayment

Section 136 Withholding of Payments
  (a) Withholdings
  (b) Notice to the Public of Commissioner Withholding
  (c) Compliance Agreements

Section 137 Policy Manual
  (a) Scope and Purpose
  (b) Contents of Policy Manual

PART E--PAYMENTS

Section 141 Payment Methods

Section 142 Amount of Payments to Local Educational Agencies

Section 143 Adjustments Where Necessitated by Appropriations

Section 144 Payments for State Administration

PART F--GENERAL PROVISIONS

Section 151 Judicial Review

Section 152 National Advisory Council

Section 153 Limitation on Grant to Puerto Rico

Section 154 *Study of Alternatives for Demonstrating Comparability*

Section 155 Definitions

[Tentative Draft]

A BILL

That title I of the Act entitled "An Act to strengthen and improve educational quality and educational opportunities in the Nation's elementary and secondary schools", approved April 11, 1965, as amended (Public Law 89-10), is amended to read as follows:

"Title I - Financial Assistance to Meet Special Educational Needs of Children

"Declaration of Policy

"Sec. 1. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children. Further, in recognition of the special educational needs of children of certain migrant parents, of Indian children and of handicapped or neglected or delinquent children, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to help meet the special educational needs of such children.

"Duration of Assistance

"Sec. 2. During the period beginning July 1, 1973, and ending September 30, 1978, the Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for grants made on the basis of entitlements created under this title.

"Part A - Programs Operated by Local Educational Agencies

"Subpart 1 - Basic Grants

"Grants - Amount and Eligibility

"Sec. 11. (a) Amount of Grants--(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under part E (other than payments under such part to jurisdictions excluded from the term 'State' by this subsection, and payments pursuant to section 81), and there is authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1973 for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(2) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (A) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States. In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under the two preceding sentences for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with basic criteria prescribed by the Commissioner.

"(3)(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

"(C) The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) by 40 per centum of (i) the average per pupil expenditure in Puerto Rico or (ii) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"(4) For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(b) Minimum Number of Children to Qualify--A local educational agency shall be eligible for a basic grant for a fiscal year under this part only if it meets the following requirements with respect to the number of children counted under subsection (c):

"(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

"(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

"(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies for all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

"(c) Children to be Counted--(1) The number of children to be counted for purposes of this section is the aggregate of (A) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A), (B) two-thirds of the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), and (C) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

"(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

"(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.

"(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under paragraph (A) of this subsection) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

"(d) Program for Indian Children--(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title, with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

"(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payments shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 3 of this part and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of subpart 3 of this part and section 102(a)(3).

"Treatment Of Earnings For Purposes Of Aid To Families With Dependent Children

"Sec. 12. Nothwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

"Subpart 2 - Special Incentive Grants

"Maximum Entitlement

"Sec. 21. (a) For each fiscal year, each State shall be entitled to a special incentive grant if such State has an effort index for the second preceding fiscal year that exceeds the national effort index for such year.

"(b) The maximum amount of a special incentive grant for which a State is eligible for any fiscal year shall be determined by multiplying the amount of $1 for each 0.01 per centum by which the effort index of that State for the second preceding fiscal year exceeds the national effort index for such year times the aggregate number of children counted for the purposes of entitled local educational agencies within such State to basic grants in accordance with sections 11(a)(2) and subparts 1, 2, and 3 of part B except that no State shall be eligible to receive a special incentive grant under this part in an amount in excess of 15 per centum of the total amount available for grants under this subpart.

"(c) For the purpose of this section the term 'effort index' when applied to States, means the per centum expressing the ratio of expenditures from all non-Federal sources in a State for public elementary and secondary education to the total personal income in such State, and the term 'national effort index' means the per centum expressing the ratio of such expenditures in all States to the total personal income in all States; and the term 'State' means the fifty States and the District of Columbia.

"Application; Use of Funds

"Sec. 22. Any State desiring the special incentive grant to which it is entitled under this subpart for any fiscal year shall make application therefor, in accordance with the requirements set forth in Sections 101 and 102 of part C, to the Commissioner. Such application shall be submitted at such time and contain such information as the Commissioner shall require by regulation and shall contain a statement of such policies and procedures as will insure that funds granted to the State under this part will be (1) made available to local educational agencies within that State which have the greatest need for assistance under this title, and (2) used, in accordance with the applicable provisions of this title, for programs and projects designed to meet the special educational needs of educationally deprived children.

"Subpart 3 - Program Requirements and Application

"Application

"Sec. 31. A local educational agency which desires to receive a distribution from its State educational agency of funds provided under this title shall submit an application setting forth a plan which provides, subject to such basic criteria as the Commissioner may prescribe, for the use of such funds in a manner which meets the requirements of this subpart. The State educational agency may approve any such application which it determines meets such requirements

"*Designating School Attendance Areas*

"Sec. 32. (a) General Provisions--Except as provided in subsections (b), (c), (d), and (e) of this section, a local educational agency must use funds received under this title in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as 'eligible school attendance areas'), and where funds under this title are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest, according to relative degree of concentration of children from low-income families. The same measure of low-income, which shall be chosen by the local educational agency and which may be a composite of several indicators, shall be used with respect to all such areas, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area. A local educational agency may carry on a program or project assisted under this title in an eligible school attendance area only if it also carries on such program or project in other eligible school attendance areas which are ranked higher under the first sentence.

"(b) Use of Enrollment Data in Certain Schools--A local educational agency may use funds received under this title for educationally deprived children who are in a school of such agency which is not located in an eligible school attendance area, but at which the proportion of children in actual average daily attendance who are from low-income families is substantially the

same as the proportion of such children in such an area of that agency (hereinafter referred to as an eligible school).

"(c) Continuation of Eligibility for Certain School Attendance Areas or Schools--An eligible school attendance area or an eligible school may be designated a project area under subsection (a) or a project school under subsection (b) for a fiscal year, even though it doesn't qualify under such subsection, if such area or school was so designated in either of the two preceding fiscal years.

"(d) Lower Ranked School Attendance Areas or Schools Having Substantially Greater Incidences of Educationally Deprived Children Than Higher Ranked Areas or Schools--The Commissioner shall issue regulations providing for an exception to subsection (a) permitting children in lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than areas or schools ranked higher under subsections (a) or (b) to receive assistance before such children in higher ranked areas or schools receive such assistance.

"(e) Skipping Higher Ranked School Attendance Areas or Schools Receiving Services of the Same Nature and Scope from Non-Federal Sources--The Commissioner shall issue regulations providing for an exception to subsection (a) or (b) permitting local educational agencies to skip higher ranked eligible school attendance areas or eligible schools receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this title.

"Children To Be Served

"Sec. 33. (a) General Provisions--Except as provided in subsections (b), (c) and (d) of this section and section 43, *a local educational agency must use funds received under this title for educationally deprived children, identified in accordance with section 34(b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 32.*

"(b) Continuation of Eligibility For Educationally Deprived Children Who Are No Longer In Greatest Need of Assistance--Where, for a fiscal year, an educationally deprived child in a school attendance area or school satisfying the requirements of section 32, does not meet the requirement of subsection (a) requiring that he be in greatest need of special assistance, but did meet such requirement in any previous year, and is still educationally deprived, that child may participate in a program or project assisted under this title for the current fiscal year.

"(c) Continuation of Eligibility For Educationally Deprived Children Transferred to Ineligible Areas In the Same Year--Educationally deprived children who begin participation in a program or project assisted under this title, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this title, may continue to participate in a program or project funded under this title for the duration of that same school year.

"(d) Skipping Children Determined to Be In Greatest Need of Assistance Receiving Services of the Same Nature and Scope From Non-Federal Sources--The Commissioner shall issue regulations providing for an exemption to subsection (a) permitting local educational agencies to skip educationally deprived children in greatest need of assistance receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this title.

"Requirements for Design and Implementation of Programs

"Sec. 34. (a) Purpose of Program--A local educational agency may use funds received under this title only for programs and projects which are designed to meet the special educational needs of the children referred to in section 33. Such programs and projects may include the acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, and, where necessary, the construction of school facilities, and planning for such programs and projects.

"(b) Assessment of Educational Needs -- A local educational agency may receive funds under this title only if it makes an assessment of educational needs each year to (1) identify educationally deprived children and to select those educationally deprived children who have the greatest need for special assistance; (2) identify the general instructional areas on which the program will focus, and (3) determine the special educational needs of participating children with specificity sufficient to facilitate development of high-quality programs and projects.

"(*c*) Planning--A local educational agency may use funds received under this title for planning only if (1) the planning relates directly to programs or projects to be *assisted* under this title and has resulted, or is reasonably likely to result, in a program or project to be assisted under this title, and (2) such funds are needed because of the innovative nature of the program or project or because such agency lacks the resources necessary to plan adequately for programs and projects to be assisted under this title. The amount a local educational agency may use for plans for any fiscal year may not exceed 1 per centum of the amount determined for that agency for that year pursuant to section 11 or $2,000, whichever is greater.

"(*d*) Sufficient Size, Scope and Quality--A local educational agency may use funds received under this title only for programs and projects which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs *of the children being served,* and to this end such programs and projects must involve an expenditure of not less than $2,500, except that a State educational agency may reduce such $2,500 requirement for a local educational agency if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for such local educational agency to join effectively with other local educational agencies for the purpose of meeting the requirement.

"(e) Expenditures Related to Ranking of Eligible School Attendance Areas or Schools--(1) A local educational agency may receive funds under this title only if it meets the requirements of paragraphs (2) or (3).

"(2) To meet the requirements of this paragraph, the expenditure, per pupil participating in any project area or project school, for programs and projects assisted under this title may not be less than such expenditures in any such area or school which is ranked lower under section 32(a).

"(3) To meet the requirements of this paragraph, the expenditure, per child from a low-income family, in any project area or project school, for programs or projects assisted under this title may not be less than such expenditures in any such area or school which is ranked lower under section 32(a). For the purpose of this paragraph, the same measure of low-income shall be used as is chosen under the second sentence of section 32(a).

"(f) Coordination With Other Programs--A local educational agency may receive funds under this title only if it demonstrates that, in the development of its application, it has taken into consideration benefits and services which are or may be available through other public and private agencies, organizations, or individuals. The local educational agency shall also demonstrate that in order to avoid duplication of effort and to ensure that all programs and projects complement each other, it has considered suggestions and offers of assistance made by other agencies which may aid in carrying out or making more effective the program or project for which the application is made.

"(*g*) Evaluations--A local educational agency may receive funds under this title only if effective procedures are in existence, including provisions for appropriate objective measurements of educational achievement, for evaluating at least annually the effectiveness of programs and projects assisted under this title in meeting the special educational needs of the children *being served*.

"(*h*) Information Dissemination--A local educational agency may receive funds under this title only if effective procedures are in existence for acquiring and disseminating to teachers and administrators significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

"(*i*) Training of Education Aides--A local educational agency may receive funds under this title for programs and projects involving educational aides only if it has in effect well-developed plans providing for coordinated programs of training in which education aides and the professional staff whom they are assisting will participate together.

"(*j*) Control of Funds--A local educational agency may receive funds under this title only if control of such funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in this title, and only if a public agency will administer such funds and property.

"*(k)* Construction--A local educational agency may use funds received under this title for projects for construction of school facilities only if--

"(1) the project is not inconsistent with overall State plans for the construction of school facilities and the requirements of section 433 of the General Education Provisions Act are complied with on all such projects.

"(2) in developing plans for such facilities due consideration has been given to compliance with such standards as the Secretary may prescribe or approve in order to insure that facilities constructed with the use of Federal funds under this title are, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by, handicapped persons, and

"(3) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"*(l)* Jointly Operated Programs--Two or more local educational agencies may, at their option, enter into an agreement for carrying out jointly operated programs and projects assisted under this title.

"Parental Involvement

"Sec. 75. (a) Establishment of Advisory Councils--A local educational agency may receive funds under this title only if it establishes an advisory council for its entire school district and *an advisory council for each project area.* Each such advisory council shall (1) have as a majority of its members parents of the children eligible to be served, and (2) be composed of members selected by the parents in each school attendance area.

"(b) Responsibilities of Advisory Councils--Each local educational agency shall give each advisory council which it establishes under subsection (a) responsibility for advising it in the planning for, and the implementation and evaluation of, its programs and projects assisted under this title.

"(c) Access to Information--Each local educational agency shall provide each advisory council which it establishes under subsection (a) with access to appropriate information concerning its programs and projects assisted under this title, in accordance with regulations of the Commissioner.

"Funds Allocation

"Sec. *36*. (a) Maintenance of Effort--(1) Except as provided in paragraph (2), a local educational agency may receive funds under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

"(2)(A) In any case in which exceptional circumstances exist with respect to a local educational agency, the Commissioner may, in accordance with the provisions of this subparagraph, waive, for one fiscal year only with respect to such local educational agency. the requirement of paragraph (1) if he determines such waiver to be equitable in order to reflect such circumstances, including those resulting from decreasing enrollments or fiscal resources of the relevant local educational agency or the State, or both. In any case in which a waiver under this subparagraph is granted, the Commissioner shall, for one fiscal year only,reduce the amount of the Federal payment for the current fiscal year in the exact proportion to which the fiscal effort per student of that agency or the amount expended by that agency was less than 100 percent for the second preceding fiscal year as required by paragraph (1).

"(B) In any case in which very exceptional circumstances exist with respect to a local educational agency, the Commissioner may waive for one fiscal year only, with respect to such local educational agency the requirement of paragraph (1) if he determines such waiver to be equitable in order to reflect such circumstances, including those from decreasing enrollments or fiscal resources of such local educational agency.

"(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection.

"(b) Use of Funds Limited to 'Excess Costs'--A local educational agency may use funds received under this title only for the excess costs of programs and projects referred to in section 33 (a). As used in this subsection, the term 'excess costs' means those costs directly attributable to programs and projects which exceed the average per pupil expenditure of a local educational agency in the most recent year for which satisfactory data are available for pupils in the grade or grades included in such programs or projects.

"(c) Federal Funds to Supplement, Not Supplant *Regular* Non-Federal Funds--A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from *regular* non-Federal sources *and from non-Federal sources for State phase-in programs described in Section 41(d)* for the education of pupils participating in programs and projects assisted under this title, and in no case may such funds be so used as to supplant such funds from *such* non-Federal sources.

"(d) Federal Funds Required to Supplement, Not Supplant Non-Federal Funds for Certain Special State and Local Programs -- A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for each of the special programs described in subsections (b) and (c) of Section 41 for the education of educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools and in no case, as to supplant such funds from non-Federal sources. It shall not be considered a violation of this subsection for a local educational agency, in carrying out a special program described in subsection (b) and (c) of section 41, to take into consideration funds made available under this title, and to coordinate such special programs with programs using such Federal funds, provided that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of such special State and local funds that would have been made available to such children in the absence of funds under this title. For purposes of this subsection, the level of funds that, in the absence of funds under this title would have been made available to such children shall be determined by reference to a plan for distributing such special funds. Such plan shall be based on objective criteria of need that do not discriminate against educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools. The objective criteria chosen by the local educational agency shall prescribe, with particularity, the children as well as the schools, grade-spans, or school attendance areas eligible for assistance and *the method for selecting the particular children who will receive assistance under such special state or local program and the schools or grade-spans which such children attend or the school attendance areas in which such children reside. The criteria for selecting children, schools, grade-spans, and school attendance areas for participation shall be either educational need, a reasonable proxy for educational need, level of poverty, or a combination of such factors. Educationally deprived children residing in eligible school attendance areas or attending eligible schools, satisfying such objective criteria, must receive assistance under either this title or under such special State or local program before any child who does not satisfy such criteria receives such assistance.*

"(e) Comparability of Services--*Subject to the provisions of section 41,* a local educational agency may receive funds under this title only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title. *Where, under regulations of the Commissioner, all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are comparable in each project area.* Each local educational agency shall report on or before July 1 of each year with respect to its compliance with this subsection.

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"Accountability

"Sec. 37. (a) Recordkeeping--Each local educational agency which receives funds under this title shall keep such records and afford such access thereto as the State educational agency shall prescribe, including records which fully disclose the amount and disposition of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of the portion of the cost of the program or project supplied by other sources, and such other records as will facilitate an effective audit. Where a local educational agency carries on a single compensatory education program paid for out of funds under this title as well as State or local funds which meets all of the requirements of this title, the State educational agency shall not require the Federal funds to be accounted for separately. In any proceeding, State or Federal, for the recoupment of any such funds which were misspent or misapplied, the percentage of the funds so misspent or misapplied which shall be deemed to be Federal funds shall be equal to the percentage of the funds used, or intended for use, for the program or project which were Federal funds.

"(b) Reporting--Each local educational agency which receives funds under this title shall make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, including information relating to the educational achievement of students participating in programs and projects assisted under this title.

"(c) Access to Information--Each local educational agency which applies for or receives funds under this title shall make the application and all pertinent documents related thereto available to parents and other members of the general public and shall make all evaluations and reports required under subsection (a) public information.

"Complaint Resolution

"Sec. 38. Each local educational agency which receives funds under this title shall develop and implement written procedures for the resolution of complaints concerning violations of this title, or of applicable provisions of the General Education Provisions Act

in connection with programs under this title, which are made to that agency by parent advisory councils, parents, teachers, or other concerned organizations or individuals. Such procedures shall--

"(1) include the dissemination to organizations and individuals interested in programs assisted under this title, of the name, title, address, and telephone number of any local official responsible for investigating and resolving complaints;

"(2) provide specific time limits for investigation and resolution of complaints, which shall not exceed thirty days;

"(3) provide an opportunity for the complainant or the complainant's representative, or both, to present evidence, including an opportunity to question parties involved;

"(4) provide for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

"(5) include a requirement that the complainant, the complainant's representative, the district parent advisory council and appropriate school parent advisory councils be notified in writing by the local educational agency, within ten days after the resolution of the complaint, of the nature of the resolution and the reasons for such resolution;

"(6) provide the right to appeal the final resolution of the local educational agency to the State educational agency within thirty days after receipt of the written decision;

"(7) provide for the dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school parent advisory councils; and

"(8) provide that exhaustion of the local educational agency complaint procedure is not a prerequisite to filing a complaint with the State educational agency or the Commissioner.

"Individualized Plans

"Sec. 39. It is the intent of the Congress to encourage, where feasible, the development for each educationally deprived child participating in a program under this title of an individualized written educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, a parent or guardian of the child, and, when appropriate, the child.

"Participation of Children Enrolled in Private Schools

"Sec. 40. (a) General Requirements--To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirements of Section 32 and 33 and subsections (a), (b), (d) and (j) of Section 34 and subsections (b), and (c) of Section 36.

"(b) By-Pass Provision-- (1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(2) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

"(3) When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under this title.

"(4)(A) The Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least sixty days notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

"(B) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(C) The findings of fact by the Commissioner , if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) Upon the filing of such petition, the court shall have jursidiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"Subpart 4-Exemptions From Certain Program Requirements

"Exclusions From Excess Costs and Comparability Provisions for Certain Special State and Local Programs

"Sec. 41. (a) In General--For the purpose of determining compliance with the requirement of section 36(b) (permitting funds to be used only for excess costs of programs and projects) and of section 36(e) (relating to comparability of services between each project area school and non-project area schools), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program or a State phase-in program. For purposes of this section--

(1) a special program is limited to--

"(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (b) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (b);

"(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (b), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (b), provided that the local educational agency *designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (b) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (b);*

"(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (b) and which the State educational agency determines is being implemented in accordance with subsection (b); or

"(D) a bilingual program or special education program which meets the requirements of subsection (c); and

(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

"(b) State and Local Compensatory Education Programs Similar to Title I Programs--A State or local program meets the requirements of this subsection if it is similar to programs assisted under this title. The Commissioner shall consider a State or local program to be similar to programs assisted under this subpart if--

"(1) all children participating in the program are educationally deprived,

"(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

"(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

"(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3) and (4) of this subsection are met.

"(c) Bilingual Programs or Special Education Programs for Handicapped Children or Children With Specific Learning Disabilities--A bilingual program for children of limited English-speaking ability or a special program for handicapped children or children with specific learning disabilities meets the requirements of this subsection if such program provides services to children residing in project areas which are comparable to those provided similarly disadvantaged children residing in non-project areas.

"(d) Certain State Phase-In Programs--A State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that--

"(1) the program is authorized and governed specifically by the provisions of State law;

"(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school ;

"(3) the program is based on objectives, including but not limited to performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

"(4) parents and school staff are involved in comprehensive planning, implementation and evaluation of the program;

"(5) the program will benefit all children in a particular school or grade-span within a school;

"(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

"(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to ______________, 1977 shall extend to the beginning of the 1980-1981 school year,

"(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest numbers or concentrations of educationally deprived children or children from low-income families,

"(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program,

"(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8) and (9) of this subsection, to the State educational agency for any funds expended for such program,

"(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8) and (9) and the State educational agency is complying with paragraph (10).

"(e) Advance Determinations by the Commissioner--The Commissioner shall make an advance determination of whether or not a State program described in subsection (a)(1)(A) or (B) or (a)(2) meets the requirements of subsection (b) or meets the requirements of subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination.

The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner.

"(f) Advance Determination By The State Educational Agency--The State educational agency shall make an advance determination of whether or not a program described in subsection (a)(l)(C) meets the requirements of subsection (b). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State Educational Agency.

"*Limited Exemption to Supplement, Not Supplant Requirement Where Certain Special Programs for Educationally Deprived Children are Fully Funded.*

"Sec. 42 Where for a fiscal year --

"(1) a local educational agency provides special State and local funds for programs for educationally deprived children which qualify under clause (A), (B), or (C) of section 41(a)(1) for an exception from the comparability and excess costs provisions under such section 41, and

"(2) the amount of such special State and local funds provided in eligible school attendance areas and for eligible schools when added to the Federal funds provided for programs under this subpart equals the funds such agency is eligible to receive for such fiscal year under section 11(a)(2) (without regard to adjustments under section 143), and under subpart 2 of part A,

then the local educational agency may, without being considered in violation of section 36(d), utilize additional State and local funds for special programs and projects which are solely for educationally deprived children residing outside of eligible school attendance areas or attending ineligible schools. The exemption in the preceding sentence does not apply to the extent the level of such special State and local funds, per child participating in such programs residing in ineligible school attendance areas or attending ineligible schools, exceeds the amount of funds, per child participating in programs in project areas provided to the agency under this part plus the amount of such special State or local funds provided for use in such areas.

"Schools and Grade Spans Having High Concentrations of Educationally Deprived Children

"Sec. 43. (a) Applicability--This section applies to a school of a local educational agency serving a project area, or to a grade-span within such a school, where 80 per centum or more of the children in average daily attendance at the school or in the grade-span at the school are educationally deprived. Hereinafter, in this section, such schools or grade-spans are referred to as 'highly concentrated schools or grade-spans'.

"(b) Optional Inclusion of Children Who Are Not Educationally Deprived In Programs and Projects Assisted Under This Title--A local educational agency may, with the approval of the school advisory council established under section 35, elect to use Federal funds made available under this subpart to pay the excess costs of programs and projects designed to meet the special educational needs of all children in average daily attendance in highly concentrated schools or grade-spans, including those who are not educationally deprived, but only if the State educational agency determines that--

"(1) in the case of a school district in which there are one or more highly concentrated schools or grade-spans and there are also one or more other schools or grade-spans serving project areas, the local educational *agency makes the Federal funds provided under this subpart available for children in such highly concentrated schools or grade-spans in amounts which, per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools or grade-spans,*

"(2) the local educational agency makes special supplementary State and local funds available for the children in highly concentrated schools or grade-spans in amounts which, per child served who is not educationally deprived, equal or exceed the amount of Federal funds provided under this subpart which, per educationally deprived child served, are made available for children in such schools or grade-spans,

"(3) the local educational agency has adopted and is carrying out a comprehensive plan (hereinafter in this paragraph referred to as a 'school level plan') for each highly concentrated school and grade span which, at a minimum, shall--

"(A) specify the steps to be taken to improve the educational attainment of all children, including those educationally deprived children who are in greatest need of assistance, in such school or grade span,

"(B) specify the steps to be taken to evaluate the effectiveness of the program and projects in improving the educational attainment of program participants, including the educationally deprived children who are in greatest need of assistance, and

"(C) contain other information appropriate to show that the programs and projects will be carried out in a manner consistent with section 32 (other than the requirement that funds be used for educationally deprived children), and sections 33 through 38.

"(c) Special Supplementary State or Local Funds Excluded From Comparability--State and local funds used to satisfy the requirement contained in paragraph (2) of subsection (b) shall be excluded from comparability determinations under section 36(e).

"(d) Children Attending Private Schools--Educationally deprived children who are enrolled in private elementary and secondary schools and who reside in a school attendance area normally served by a highly concentrated school or are in a highly concentrated grade span of such a school shall receive the same nature and scope of services as they would receive under section 40 if funds had not been used in the manner permitted by subsection (b) for such highly concentrated school or grade span.

"Part B - Programs Operated By State Agencies

"Subpart 1 - Programs for Migratory Children

"Grants - Entitlement and Amount

"Sec. 51. (a) Entitlement--A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen which meet the requirements of section 52.

"(b) Amount of Grant--Except as provided in sections 81 and 82, the total grants which shall be made available for use in any State (other than Puerto Rico) for this subpart shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by (1) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and (2) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under section 52, the Commissioner shall allocate such excess, to the extent necessary, to other States whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. The total grant which shall be made available for use in Puerto Rico shall be arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

"Program Requirements

"Sec. 52. (a) Requirements for Approval of Applications--The Commissioner may approve such an application only upon his determination-

"(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate these programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

"(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part B of title III of the Economic Opportunity Act of 1964;

"(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of subpart 3 of part A, other than sections *32, 33, 35, 36(d), and 40* thereof; and

"(4) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this clause will not detract from the operation of programs and projects described in paragraph (1) of this subsection after considering funds available for this purpose.

"(b) Continuation of Migrant Status --For purposes of this subpart, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this section. Such children who are presently migrant, as determined pursuant to regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this subsection.

"(c) By-Pass Provision--If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

"Subpart 2 - Programs for Handicapped Children

"Amount and Eligibility

"Sec. 61. (a) Eligibility for Grant--A State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), shall be eligible to receive a grant under this subpart for any fiscal year.

"(b) Amount of Grant--Except as provided in sections 81 and 82, the grant which a State agency referred to in subsection (a) (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil exepnditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States), multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"(c) Counting of Children Transferring from State to Local Programs--In the case where such a child leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in section 62.

"Program Requirements

"Sec. 62. A State shall use the payments made under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children. Such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections *32, 33, 35, 36(d), 36(e) and 40* thereof. The State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) of section 61 will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

"Subpart 3 - Programs for Neglected and Delinquent Children

"Amount and Entitlement

"Sec. 71. (a) Entitlement to Grants--A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

"(b) Amount of Grant--Except as provided in sections 81 and 82, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this subpart shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

"Program Requirement

"Sec. 72. A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections *32, 33, 35, 36(d), 36(e), and 40 thereof.*

"Subpart 4 - General Provisions For State Operated Programs

"Reservation Of Funds For Territories

"Sec. 81. There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 per centum of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.

"Minimum Payments For State Operated Programs

"Sec. 82. No State shall receive in any fiscal year prior to October 1, 1978, pursuant to subparts 1, 2, or 3 of this part an amount which is less than 100 per centum of the amount which that State received in the prior fiscal year pursuant to the comparable sections of this title as in effect immediately preceding the enactment of the [this]__________ Act or the comparable subpart of this part, whichever was in effect for such prior fiscal year.

"Part C - State Administration of Programs and Projects Assisted Under This Title

"Subpart 1 - State Applications

"Submission of State Application

"Sec. 101. Any State desiring to participate under this title (except with respect to the program provided for in subpart 1 of part B relating to migratory children) shall submit for each fiscal year an application to the Commissioner through its State educational agency.

"Contents of State Applications

"Sec. 102. Each application required by section 101 shall contain (a) satisfactory assurances that the State educational agency will comply with the requirements of this part, (b) such information as the Commissioner may consider necessary for him to make the findings required by section 132; and (c) a copy of the State management summary provided under section 121.

"Subpart 2 - Duties Imposed on State Educational Agencies

"Application Approval

"Sec. 111. (a) Requirements for Approval -- (1) A State educational agency shall approve an application of a local educational agency or a State agency under this title if (A) such State educational agency is satisfied, after considering the factors specified in paragraph (2), that such applicant agency will use the funds received under the application in a manner which meets the requirements of this title, the General Education Provisions Act, and the rules, regulations, procedures, guidelines, criteria, or other requirements adopted by such agency which pertain to

programs and projects assisted under this title, and (B) such applicant agency is not out of compliance with a determination of the State educational agency or the Commissioner that it repay funds paid it under this title which were misused, and is not out of compliance with a compliance agreement under section 116(c).

(2) A State educational agency may approve an application under subsection (a), only after it has considered, where pertinent, (A) the results of Federal and State audits, (B) the results of Federal and State monitoring reports, (C) administrative complaints made by parents or other individuals concerning the applicant agency's compliance with this title, and (4) evaluations conducted under section 34(g).

"(b) Payments--Except as provided in section 144, a State educational agency may make payments from funds received under this title only for programs and projects which it has approved under subsection (a).

"(c) Opportunity for Hearing--A State educational agency shall not finally disapprove in whole or in part any application for funds under part A or under subpart 2 or subpart 3 of part B without first affording the local educational agency or other applicant submitting the application reasonable notice and opportunity for a hearing.

"State Rulemaking

"Sec. 112. Nothing in this title shall be deemed to prohibit a State educational agency from adopting rules, regulations, procedures, guidelines, criteria, or other requirements applicable to programs and projects assisted under this title if they do not conflict with the provisions of this title or with regulations promulgated by the Commissioner implementing this title or other applicable Federal law. The Commissioner shall encourage State educational agencies, in adopting such rules, regulations, procedures, guidelines, criteria, or other requirements to recognize the special and unique needs and circumstances of the State and of each local educational agency in the State.

"Technical Assistance and Dissemination of Information

"Sec. 113. Each State educational agency shall carry on a comprehensive program to provide technical assistance to local educational agencies and State agencies with respect to the use of funds received under this title. Such a program shall include technical assistance for management procedures, for planning, development, implementation and evaluation of programs, and for preparation of applications, as well as other forms of technical assistance needed by local educational agencies and State agencies. Each State educational agency shall also adopt effective procedures for disseminating to local educational agencies and State agencies (1) significant and relevant information derived from educational research, (2) information about successful compensatory education projects, and (3) such other information as will assist local educational agencies and State agencies in planning, developing, implementing, and evaluating programs assisted under this title.

"Monitoring

"Sec. 114. [illegible]ch State educational agency shall adopt standards, consistent with minimum standards established by the Commissioner, for monitoring the effectiveness of programs and projects assisted under this title. Such standards shall (1)describe the purpose and scope of monitoring;(2)specify the frequency of on-site visits;(3)describe the procedures for issuing and responding to monitoring reports,including but not limited to,the period of time in which the State educational agency must issue its report, the period of time in which the applicant agency must respond, and the appropriate follow-up by the State educational agency, (4)specify the methods for making monitoring reports available to parents, State and local auditors, and other persons,and (6)specify the methods for ensuring that non-compliant practices are corrected.

"Complaint Resolution

"Sec. 115. Each State educational agency shall adopt written procedures for receiving complaints, or reviewing appeals from decisions of local educational agencies with respect to complaints, concerning violations of this title or applicable provisions of the General Education Provisions Act in connection with programs assisted under this title, and for conducting any on-site investigations of such complaints which the State educational agency deems necessary. Such procedures shall include--

(1) the dissemination to organizations and individuals interested in programs assisted under this title of the name, title, address, and telephone number of any official of the State educational agency responsible for receiving complaints or for reviewing complaints and appeals from the final complaint resolution decision of a local educational agency and for conducting, if necessary, an independent investigation of the complaint;

(2) specific time limits for resolving the complaint or completing the review and, if necessary, the independent on-site investigation, which shall not exceed sixty days unless exceptional circumstances exist;

(3) an opportunity for the complainant or the complainant's representative, or both, and the local educational agency involved to present evidence, including the opportunity to question parties to the dispute and any of their witnesses;

(4) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

(5) a requirement that the complainant, the complainant's representative, the local educational agency, the district advisory council, and appropriate school advisory councils be notified in writing, by the State educational agency within ten days after the resolution of the complaint or appeal, of the nature of the resolution and the reasons for such resolution;

(6) the right to appeal the final resolution of the State educational agency to the Commissioner within thirty days after receipt of the written decision;

(7) dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school advisory councils; and

(8) the provision to each complainant of a statement that exhaustion of the State educational agency complaint procedure is not a prerequisite to filing a complaint with the Commissioner.

"Withholding of Payments

"Sec. 116. (a) Withholding -- Whenever a State educational agency, after reasonable notice and opportunity for a hearing to any local educational agency or State agency, finds that there has been a failure to comply substantially with any provision of subpart 3 of part A or subpart 2 or 3 of part B, the State educational agency shall notify such agency that further payments will not be made to it under this title until it is satisfied that there is no longer any such failure to comply. Until it is so satisfied, no further payments shall be made to such agency under this title, except as may be provided in a compliance agreement entered into under subsection (c). Pending the outcome of any proceeding under this subsection, the State educational agency may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) Notice to Public of State Withholding -- Upon receipt by a local educational agency or a State agency of a notice that the State educational agency pursuant to subsection (a) is withholding payment the State educational agency shall inform the district advisory council and shall take such additional action as may be necessary to bring the State action to the attention of the public.

"(c) Compliance Agreements -- A State educational agency may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which (1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, and with the applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency, (2) which addresses all the matters that formed the basis for the initiation of the withholding action by the state educational agency and (3) which may consist of a series of agreements that in the aggregate dispose of all such matters. Within 15 days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"(d) Review by the Commissioner--A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (a) to the Commissioner.

"Audits and Audit Resolution

"Sec. 117. (a) Auditing--Each State shall make provision for audits of the expenditure of funds received under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. Such audits shall be made with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

"(b) Audit Resolution--Each State educational agency shall have in effect written procedures, meeting minimum standards established by the Commissioner, to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include a description of the audit resolution process, timetables for each step of the process, and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of federal funds which were misspent or misapplied, such repayment may be made only from funds derived from non-federal sources. Such repayments may be made in either a single payment or in installments over a period not to exceed three years.

"(c) Requirement for Repayment--A local educational agency or State agency shall repay from non-federal sources the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied.

"(d) **Review By The Commissioner**--A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (b) to the Commissioner.

"(e) Failure to Repay--If, following an affirmance by the Commissioner of a final determination of a State educational agency under subsection (b) or failure by a local educational agency or State agency to seek timely review by the Commissioner, such local educational agency or State agency refuses to repay from non-federal sources funds which have been misspent or misapplied under this title, the State educational agency shall promptly notify the Commissioner and the Commissioner shall promptly initiate collection action.

Subpart 3--Responsibilities of State Educational Agencies to Commissioner

"State Management Summary

"Sec. 121.(a) Requirement for -- In order to assist a State educational agency in making a self-evaluation of its performance under this title, and to assist the Commissioner in making the findings required by section 132 , each State educational agency receiving funds under this title shall annually prepare a State management summary which meets the requirements of subsection (b). A copy of such summary shall be included in the State's application under section 101.

"(b) Contents of State Management Summaries--A State management summary shall include a description of its plans and procedures for carrying out its responsibilities under subpart 2 of this part and of its experience in carrying out its responsibilities under this title in past periods. The description shall include, or be supported by--

"(1) copies of (A) the regulations, guidelines, procedures, and program instructions issued by the State educational agency to provide guidance to local educational agencies and State agencies in carrying out programs and projects assisted under this title, (B) application forms which the State educational agency requires to be used, (C) check lists used by such agency in approving applications, (D) documents used by such agency in monitoring programs, and (E) technical assistance guides.

"(2) information with respect to the agency's management activities under this title for the preceding year (or other period prescribed by the Commissioner), including quantitative data summarizing such activities, and projections of such activities for the year covered by the application in question.

"(3) a statement of the number of local educational agencies in the State and the number of local educational agencies and State agencies in the State participating in programs under this title.

The information required by paragraph (2) shall include (A) the number of full-time equivalent person-days expended *is reviewing applications under this title; (B) the number of full-time equivalent person days of technical assistance provided, and a brief description of the types of such assistance which were provided, (C) a list of the applicant agencies which were monitored, the number of full-time equivalent person days per monitoring visit, and a brief description of the manner in which major monitoring findings were disposed of, including action taken by State and local educational agencies and State agencies; (D) a list of applicant agencies which were audited, a statement showing whether each audit was State-conducted, locally conducted, or by an independent auditor, and a brief description of each major audit exception, the statutory or regulatory provision upon which the exception is based, the manner in which each audit exception was disposed of, the action taken by the State and local educational agencies, and State agencies; (E) the number of citizen complaints and a brief description of the manner in which each such complaint was disposed of; and (F) the number of times the State educational agency, after reasonable notice and opportunity for a hearing, withheld or suspended funds under this title.*

"Reporting

"Sec. 122. Each State educational agency shall make to the Commissioner (A) periodic reports (including the results of objective measurements required by section 33(g) and of research and replication studies) evaluating the effectiveness of payments under this title and of particular programs assisted under it in improving the educational attainment of educationally deprived children and (B) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this title (including such reports as he may require to determine the amounts which the local educational agencies of that state are eligible to receive for any fiscal year.

"Recordkeeping, Fiscal Control and Fund Accounting

"Sec. 123. Each State educational agency which receives funds under this title shall keep such records as the Commissioner shall prescribe, including records which fully disclose the amount and disposition by such agency of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of that portion of the cost of the program a project supplied by other sources, and such other records as will facilitate an effective audit.

"Prohibition on Consideration of Federal Aid in Determining State Aid

"Sec. 124. No state shall take into consideration payments under this title in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children during that year or the preceding fiscal year.

"Part D - Federal Administration of Programs and Projects Assisted Under Title I

"Applicability

"Sec. 131. In addition to other requirements contained in this part, the requirements of the General Education Provisions Act which relate to Federal administration of elementary and secondary education programs shall apply to programs carried out under this title.

"Approval of Applications

"Sec. 132(a) Requirement for Approval -- The Commissioner shall not approve an application under section 101 until he has made specific findings, in writing, that the application and the State management summary required under section 121 comply with this title, and that he is satisfied that the assurances in such application will be carried out.

"(b) Hearings -- The Commissioner shall not finally disapprove an application under section 52 or section 101 except after notice and opportunity for a hearing to the State educational agency.

"Program Evaluation

"Sec. 133. (a) Independent Evaluations--The Commissioner shall provide for independent evaluations which describe and measure the impact of programs and projects assisted under this title. Such evaluations may be provided by contract or other arrangements, and all such evaluations shall be made by competent and independent persons, and shall include, whenever possible, opinions obtained from program or project participants about the strengths and weaknesses of such programs and projects.

"(b) Development and Publication of Standards--The Commissioner shall develop and publish standards for evaluation of program or project effectiveness in achieving the objectives of this title.

"(c) Jointly Sponsored Studies--The Commissioner shall, where appropriate, consult with State agencies in order to provide for jointly sponsored objective evaluation studies of programs and projects assisted under this title within a State.

"(d) Evaluation Models--The Commissioner shall provide to State educational agencies, models for evaluations of all programs conducted under this title, for their use in carrying out their functions under section 102, which shall include uniform procedures and criteria to be utilized by local educational agencies and State agencies, as well as by the State agency in the evaluation of such programs.

"(e) Technical Assistance--The Commissioner shall provide such technical and other assistance as may be necessary to State educational agencies to enable them to assist local educational agencies and State agencies in the development and application of a systematic evaluation of programs in accordance with the models developed by the Commissioner.

"(f) Specification of Objective Criteria--The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques (such as longitudinal studies of children involved in such programs) and methodology (such as the use of tests which yield comparable results) for producing data which are comparable on a statewide and nationwide basis.

"(g) Report to Congress--The Commissioner shall make a report to the respective committees of the Congress having legislative jurisdiction over programs authorized by this title and the respective Committees on Appropriations no later than February 1 of each calendar year concerning the results of evaluations of programs and projects required under this section, which shall be comprehensive and detailed, as up-to-date as possible, and based to the maximum extent possible on objective measurements, together with other related findings and evaluations and his recommendations with respect to legislation.

"(h) Information Dissemination--The Commissioner shall also develop a system for the gathering and dissemination of results of evaluations and for the identification of exemplary programs and projects, or of particularly effective elements of programs and projects, and for the dissemination of information concerning such programs and projects or such elements thereof to State agencies and local educational agencies responsible for the design and conduct of programs and projects under this title, and to the education profession and the general public.

"(i) Maximum Expenditures--The Commissioner is authorized, out of funds appropriated to carry out this title in any fiscal year, to expend such sums as may be necessary to carry out the provisions of this section, but not to exceed one half of 1 per centum of the amount appropriated for such programs. In carrying out the provisions of this section, the Commissioner shall place priority on assisting States, local educational agencies, and State agencies to conduct evaluations and shall, only as funds are available after fulfilling that purpose, seek to conduct any national evaluations of the program.

"Complaint Resolution

"Sec. 134. The Commissioner shall develop and implement written procedures for receiving appeals from final resolutions of State educational agencies with respect to complaints concerning violations of this title or of applicable provisions of the General Education Provisions Act in connection with programs under this title, for receiving such complaints directly from parent advisory councils, parents, teachers, or other concerned organizations or individuals, and for conducting independent onsite investigations of such complaints if the Commissioner deems necessary. Such procedures shall include--

"(1) identification by name, title, address, and telephone number of any officials of the Office of Education responsible for receiving complaints, for reviewing appeals from the final complaint resolution decision of a State educational agency and for conducting necessary independent investigations of complaints;

"(2) specific time limits for resolving the complaint or for completing the review and any necessary independent investigation, which shall not exceed sixty days unless exceptional circumstances exist;

"(3) an opportunity for the complainant, the complainant's representative, the local educational agency, and the State educational agency to present evidence;

"(4) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

"(5) a requirement that the complainant, the complainant's representative, the local educational agency, the State educational agency, State agency, the district parent advisory council, and appropriate school parent advisory councils shall be notified, in writing, within ten days after the resolution of the appeal of the nature of the resolution, the reasons therefor, and the right to an administrative appeal; and

"(6) dissemination of information concerning these procedures.".

"Audits and Audit Resolution

"Sec. 135. (a) Auditing--The Inspector General of the Department of Health, Education, and Welfare shall make provision for audits of grants made under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

"(b) Audit Resolution and Repayment--The Commissioner shall adopt procedures to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include timetables for each step of the audit resolution process and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of federal funds which were misspent or misapplied, the Commissioner shall require the repayment of the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied. Such repayment may be made from funds derived from non-federal sources or from federal funds other than funds appropriated to carry out the purposes of this title. Such repayments may be made in either a single payment or in installment payments over a period not to exceed three years.

"Withholding of Payments

"Sec. 136. (a) Withholdings--Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in the application of that

State approved under section 52 or 101 the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this title, or payments by the State educational agency under this title shall be limited to local educational agencies and State agencies not affected by the failure, as the case may be. *Pending the outcome of any proceedings under this subsection, the Commissioner may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.*

"(b) Notice to Public of Commissioner Withholding--Upon receipt by a State of a notice under subsection (a) that the Commissioner is withholding payments, the Commissioner shall take such action as may be necessary to bring his action to the attention of the public within the State.

"(c) Compliance Agreements--The Commissioner may suspend the initiation or continuation of his withholding action under subsection (a) during any period there is in effect a compliance agreement with the State educational agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the State educational agency fails to comply with the terms agreed to, such an agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the Commissioner shall take

into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which (1) sets forth the terms and conditions to which the State or local educational agency or State agency has agreed to in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, (2) which addresses all the matters that formed the basis for the initiation of the withholding action by the Commissioner, and (3) which may consist of a series of agreements that in the aggregate dispose of all such matters. A compliance agreement under this subsection shall not be exempt from disclosure under any provision of section 552, of title 5 United States Code. Within 15 days after the execution of any compliance agreement under this subsection, the Commissioner shall send a copy thereof to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"Policy Manual

"Sec. 137. (a) Scope and Purpose--The Commissioner shall, not later than ____ months after the publication of final regulations with respect to the amendments to this title made by the ____________________ Act, prepare and distribute to State educational agencies, State agencies operating programs for neglected and delinquent and handicapped children, local educational agencies, and district-wide parent advisory councils established under Section 35(a), and shall make available to other interested individuals, ojganizations, and agencies a title I policy manual to --

"(1) assist local educational agencies, State educational agencies operating programs for migrant children, and State agencies operating programs for neglected and delinquent and handicapped children in (A) preparing applications for program funds under this title, (B) meeting the applicable program requirements under this title, and (C) enhancing the quality, increasing the depth or broadening the scope of activities for programs under this title;

"(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this title;

"(3) assist advisory councils established under section 35(a) in advising the local educational agencies in the planning for and implementation and evaluation of programs and projects under this title; and

"(4) ensure that officers and employees of the Department of Health, Education, and Welfare, including, but not limited to, officers and employees of the Commissioner and officers and employees of such Department charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States.

"(b) Contents of Policy Manual--The policy manual shall, with respect to programs carried on under this title, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations, and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available, the manual shall include (but not be limited to)--

"(1) a statement of the requirements applicable to the programs carried on under this title including such requirements contained in this title, the General Education Provision Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement, including appropriate references to legislative history;

"(3) an explanation of the interrelationships between the applicable requirements;

"(4) a statement of the procedures to be followed by the Commissioner and the Secretary with respect to proper and efficient performance of their administrative responsibilities, including but not limited to (A) approving State applications or State plans, (B) distributing grants to appropriate agencies, (C) resolving problems discovered during monitoring visits, (D) resolving financial exceptions disclosed during audits, (E) collecting outstanding claims arising out of activities under this title, (F) resolving complaints, (G) responding to requests for advisory opinions interpreting and applying

standards contained in applicable statutes and regulations to the public, (H) identifying and publicizing exemplary programs and (I) making public final audit determinations of the Commissioner.

"(5) summaries of (i) advisory opinions referred to in subsection (b) (4) (G) of this section and (ii) final audit determinations referred to in subsection (b) (4) (I), including examples of actual applications of the legal requirements of applicable statutes and regulations;

"(6) model forms and instructions developed by the Commissioner for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, application review checklists, and instruments for monitoring programs operated by applicant agencies;

"(7) summaries of appropriate court decisions concerning programs under this title;

"(8) examples of methods of distributing State and local funds which do and do not satisfy the applicable requirements under this title; and

"(9) model forms, policies, and procedures developed by State educational agencies.

"Part E - Payments

"Payment Methods

"Sec. 141. The Commissioner shall, subject to the provisions of section 123, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

"Amount of Payments to Local Educational Agencies

"Sec. 142. From the funds paid to it pursuant to section 121 each State educational agency shall distribute to each local educational agency of the State which is not ineligible by reason of section 11(b) and which has submitted an application approved pursuant to section 31 the amount for which such application has been approved, except that this amount shall not exceed the amount determined for that agency pursuant to section 11.

"Adjustments Where Necessitated By Appropriations

"Sec. 143. If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such section. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this title for such year, the allocations to such agencies and allocations under subpart 2 of part A shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated, except that entitlements under such subpart 2 shall be taken into consideration only to the extent that appropriations for such title I exceed $1,396,975,000 for any fiscal year and such entitlements shall not exceed $50,000,000 in any fiscal year. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 80 per centum of its allocation for such year. If the aggregate of the amounts to which all States are entitled under such subpart 2 exceeds $50,000,000 the entitlement of each State shall be reduced ratably until such aggregate does not exceed $50,000,000 in such fiscal year.

In case additional funds become available for making payments under this title for that year, such reduced amounts shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State, and (2) State educational agencies referred to in subpart 1 of part B must file applications. If the maximum grant a local educational agency or an agency referred to in subpart 1 of part B would receive (after any ratable reduction which may have been required under the first sentence of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of paragraph (2) of section 11(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

"Payments for State Administration

"Sec. 144 . The Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title, (including technical assistance for the measurements and evaluations required by section 33(c)), except that the total of such payments in any fiscal year shall not exceed-

"(1) 1 per centum of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under this title; or

"(2) $150,000, or $25,000 in the case of Guam, American Samoa, the Virgin Isalnds, or the Trust Territory of the Pacific Islands,

whichever is the greater.

"Part F - General Provisions

"Judicial Review

"Sec. 151. (a) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under subpart 1 of part B or section 101 or with his final action under section 135 or 136, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(b) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"National Advisory Council

"Sec. 152. (a) There shall be a National Advisory Council on the Education of Disadvantaged Children (hereinafter in this section referred to as the "National Council") consisting of fifteen members appointed by the President, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, for terms of three years, except that (1) in the case of initial members, five shall be appointed for terms of one year each and five shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be only for such terms as remain unexpired. The National Council shall meet at the call of the Chairman.

"(b) The National Council shall review and evaluate the administration and operation of this title, including its effectiveness in improving the educational attainment of educationally deprived children, including the effectiveness of programs to meet their occupational and career needs, and make recommendations for the improvement of this title and its administration and operation. These recommendations shall take into consideration experience gained under this and other Federal educational programs for disadvantaged children and, to the extent appropriate, experience gained under other public and private educational programs for disadvantaged children.

"(c) The National Council shall make such reports of its activities, findings, and recommendations (including recommendations for changes in the provisions of this title) as it may deem appropriate and shall make an annual report to the President and the Congress not later than March 31 of each calendar year. Such annual report shall include a report specifically on which of the various compensatory education programs funded in whole or in part under the provisions of this title, and of other public and private educational programs for educationally deprived children, hold the highest promise for raising the educational attainment of these educationally deprived children. The President is requested to transmit to the Congress such comments and recommendations as he may have with respect to such report. Subject to section 448(b) of the General Education

Provisions Act, the National Council shall continue to exist until October 1, 1978.

"Limitation on Grant to Puerto Rico

"Sec. 153. Notwithstanding any provisions of part A or of subpart 1, 2, or 3 of part B of this title, the amount the Commonwealth of Puerto Rico is eligible to receive under such part or subpart for the fiscal year ending September 30, 1978, shall not exceed 75 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such part or subpart but for this section.

"Study of Alternatives for Demonstrating Comparability.

"Sec. 154. (a) Purpose of Study -- The Commissioner shall, during the period ending September 30, 1980, make a study of the feasibility and desirability of alternative criteria for demonstrating the comparability of services provided with State and local funds in each project area to those provided outside such areas which ensure, at least to the same extent as the criteria in existing regulations published in the Federal Register, (41 F.R. 42894 et seq., September 28, 1976) that children in each school serving a project area receive comparable services paid for out of State and local funds.

"(b) Areas to be Studied and Waiver Authority for Such Areas -- The Commissioner may select all the local educational agencies in one State and not more than twenty such agencies in other States which are reasonably representative of the various geographical areas of the Nation for participation in the study provided for in this section. For purposes of the study, the Commissioner, without regard to section 431 of the General Education Provisions Act, may permit the use of substitute criteria meeting the requirements of subsection (c) in place of criteria contained in existing regulations, to be applicable only for the school years 1978-1979 and 1979-1980 and only to local educational agencies selected to participate in the study.

"(c) Selection of Alternative Criteria -- Local educational agencies selected for participation in the study provided for in this section shall demonstrate comparability through the use of alternative criteria, which, at a minimum, meet the conditions of paragraphs (1) through (6) --

"(1) Such criteria are approved by the district-wide advisory council established under section 35;

"(2) Based on such criteria each school serving a project area receives services comparable to those services provided with State and local funds in schools not receiving assistance under this title;

"(3) Services measured by such criteria shall vary by not more than 5 percent between each school serving a project area and other schools of the agency;

"(4) Compliance with such criteria shall be determined on the basis of services actually provided during the current school year;

"(5) If expenditures are used in the criteria, only expenditures for instructional services shall be included and for this purpose 'instructional services' means current expenditures for free public education other than expenditures for attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities;

"(6) In all other respects, such criteria shall be consistent with the regulations of the Commissioner pertaining to comparability of services.

"(d) Continuation of Reporting Under Existing Criteria -- In order to provide a basis for comparison, local educational agencies participating in the study under this section shall continue to make reports under existing criteria for comparability of services.

"Definitions

"Sec. 155 . Except as otherwise provided, for purposes of this title-

"(1) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency

for all public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(2) The term 'school attendance area' means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

"(3) The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

"(4) The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

"(5) The term 'State' means a State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

"(6) The terms 'Commissioner of Education' and 'Commissioner' means the United States Commissioner of Education.

"(7) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(8) The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(9) The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

"(10) The term 'current expenditures' means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under titles I, II, or III of this Act.

"(11) Average daily attendance shall be determined in accordance with State law, except that not withstanding any other provision of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

"(12) The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

"(13) The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities, "(14) The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"(15) The term ' equipment' includes machinery, utilities, and building equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

"(16) The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law, and the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(17) The term 'average per pupil expenditure means in the case of a State or the United States, the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

Sec. 2. (a) Section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first-Congress), is amended--

(1) by striking out, "except as used in title II", where it appears in paragraph (2);

(2) by striking out, "except that for purposes of title II such term does not include any education provided beyond grade 12", where it appears in paragraph (4);

(3) by striking out, "title II of this act or title II or III" where it appears in paragraph (5), and inserting "title I, II, or III of".

(4) by striking out, "(A)" where it appears in paragraph (6) and by striking out subparagraph (B) of such paragraph;

(5) by striking out", and for purposes of title II, such term includes the Trust Territory of the Pacific Islands";

(6) by striking out paragraphs (15), (16), and (17).

Sec. 3. (a) Title II of the Act of September 30, 1950 (Public Law 874, Eighty-first-Congress), is repealed.

(b) Section 431A(b) of the General Education Provisions Act is amended by striking out paragraph (2) thereof.

Sec. 4. Section 101(a)(10) of the Education Amendments of 1974 is amended by striking out "part A" and inserting in lieu thereof "subpart 1 of part A and part B".

POLICY MANUAL

Policy Manual

Findings *

NIE found that the legal requirements of the Title I statute and regulations are generally sound but OE has failed to develop an adequate system for disseminating its interpretations and explanations of the legal requirements to the relevant audience -- particularly administrators of Title I programs. This failure of OE to adequately communicate its policies increases the likelihood (1) that LEAs will not comply with Title I requirements, (2) that SEAs and LEAs will pursue overly-restrictive policies, and (3) that HEW and OE officials will not uniformly administer the law throughout the nation. The Legal Standards Project has drafted a statutory amendment providing for the development of a policy manual to address these findings.

NIE also concluded that existing OE regulations are not sufficiently clear because they fail to take into consideration the needs of the audience. The regulations generally contain the applicable standards and operative definitions but fail to explain how the principles apply to day-to-day situations occurring within the school or school district. The Project proposes language for inclusion in the legislative history which would require OE to draft regulations so as to address the needs of the audience.

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* These findings are discussed at p. 18 of a report prepared by NIE entitled, Administration of Compensatory Education and at pages 38-96 in a paper prepared by the Legal Standards Project entitled, An Analysis of the Basis for Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of ESEA.

Amend part D by adding at the end thereof the following new section:

"Policy Manual

"Sec. 137. (a) Scope and Purpose--The Commissioner shall, not later than_______________months after the publication of final regulations with respect to the amendments to this title made by the ___________________________Act, prepare and distribute to State educational agencies, State agencies operating programs for neglected and delinquent and handicapped children, local educational agencies, and district-wide parent advisory councils established under Section 35(a), and shall make available to other interested individuals, organizations, and agencies a title I policy manual to --

"(1) assist local educational agencies, State educational agencies operating programs for migrant children, and State agencies operating programs for neglected and delinquent and handicapped children in (A) preparing applications for program funds under this title, (B) meeting the applicable program requirements under this title, and (C) enhancing the quality, increasing the depth or broadening the scope of activities for programs under this title;

"(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this title;

"(3) assist advisory councils established under section 35(a) in advising the local educational agencies in the planning for and implementation and evaluation of programs and projects under this title; and

"(4) ensure that officers and employees of the Department of Health, Education, and Welfare, including, but not limited to, officers and employees of the Commissioner and officers and employees of such Department charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States.

"(b) Contents of Policy Manual--The policy manual shall, with respect to programs carried on under this title, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations, and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available, the manual shall include (but not be limited to)--

"(1) a statement of the requirements applicable to the programs carried on under this title including such requirements contained in this title, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement, including appropriate references to legislative history;

"(3) an explanation of the interrelationships between the applicable requirements;

"(4) a statement of the procedures to be followed by the Commissioner and the Secretary with respect to proper and efficient performance of their administrative responsibilities, including but not limited to (A) approving State applications or State plans, (B) distributing grants to appropriate agencies, (C) resolving problems discovered during monitoring visits, (D) resolving financial exceptions disclosed during audits, (E) collecting outstanding claims arising out of activities under this title, (F) resolving complaints, (G) responding to requests for advisory opinions interpreting and applying standards contained in applicable statutes and regulations to the public, (H) identifying and publicizing exemplary programs, and (I) making public final audit determinations of the Commissioner.

"(5) summaries of (i) advisory opinions referred to in subsection (b)(4)(G) of this section and (ii) final audit determinations referred to in subsection (b)(4)(I), including examples of actual applications ofthe legal requirements of applicable statutes and regulations;

"(6) model forms and instructions developed by the Commissioner for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, application review checklists, and instruments for moni-

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"(4) ensure that officers and employees of the Department of Health, Education, and Welfare, including, but not limited to, officers and employees of the Commissioner and officers and employees of such Department charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States.

"(b) Contents of Policy Manual--The policy manual shall, with respect to programs carried on under this title, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations, and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available, the manual shall include (but not be limited to)--

"(1) a statement of the requirements applicable to the programs carried on under this title including such requirements contained in this title, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement, including appropriate references to legislative history;

"(3) an explanation of the interrelationships between the applicable requirements;

"(4) a statement of the procedures to be followed by the Commissioner and the Secretary with respect to proper and efficient performance of their administrative responsibilities, including but not limited to (A) approving State applications or State plans, (B) distributing grants to appropriate agencies, (C) resolving problems discovered during monitoring visits, (D) resolving financial exceptions disclosed during audits, (E) collecting outstanding claims arising out of activities under this title, (F) resolving complaints, (G) responding to requests for advisory opinions interpreting and applying standards contained in applicable statutes and regulations to the public, (H) identifying and publicizing exemplary programs, and (I) making public final audit determinations of the Commissioner.

"(5) summaries of (i) advisory opinions referred to in subsection (b)(4)(G) of this section and (ii) final audit determinations referred to in subsection (b)(4)(I), including examples of actual applications ofthe legal requirements of applicable statutes and regulations;

"(6) model forms and instructions developed by the Commissioner for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, application review checklists, and instruments for monitoring programs operated by applicant agencies;

"(7) summaries of appropriate court decisions concerning programs under this title;

"(8) examples of methods of distributing State and local funds which do and do not satisfy the applicable requirements under this title; and

"(9) model forms, policies, and procedures developed by State educational agencies.

Proposed Language For Inclusion In The Committee Reports

The National Institute of Education found that although the Title I requirements contained in the statute and regulations are generally necessary, consistent, and flexible, these requirements were not sufficiently clear and specific to guide the affected audience -- particularly administrators of the program--in the application of particular standards to day-to-day situations. Although NIE found that many applications to particular situations were discussed in program guidelines, handbooks and letters of interpretation, such interpretations typically have not been widely disseminated. A report issued by NIE entitled, Administration of Compensatory Education concludes that ". . . although OE has developed a precisely phrased body of interpretations which if assembled, summarized, and interrelated would resolve the overwhelming majority of difficult questions raised by states and districts, OE has failed to disseminate these interpretations widely." The NIE report also describes the potential effect on the quality of program administration resulting from insufficient clarity in the regulations and the existence of an inadequate system for disseminating its clarifications: "Since States, rather than the Federal government, have the responsibility for the day-to-day oversight of local Title I programs, they often have to interpret Federal policies for local situations . . . Because of this additional step of developing and disseminating a legal framework to guide local behavior, the clarity of the Federal framework takes on added importance. A failure to comprehend the details of it may be compounded by the interpretations that States incorporate into their own directions to districts. The result may be either inaccurate or illegal state interpretations or state requirements that are overly restrictive." The amendment requiring that OE develop and distribute a policy manual is an attempt to address such problems which NIE uncovered. The policy manual will increase the likelihood that Title I requirements are interpreted by State educational agency officials, OE monitors and HEW auditors in a uniform and non-restrictive fashion.

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The NIE report on administration referred to above also includes, in an appendix, recommendations made by one of its contractors for improving the clarity of the federal legal framework.

> OE should include, under each substantive requirement set forth in regulations published in the Federal Register, illustrative examples of its application to commonly occurring situations. This technique is commonly used by other agencies for clarifying complex requirements.
>
> A separate section entitled "interpretations" should be included in the regulations. This section should be organized by subject area, rather than by requirement. Suggested headings include: teacher aides, support services, pullout programs, in-class programs, desegregation, individualized instruction, inservice training, programs in open-space schools, etc. The resolution of the problems arising in these areas often involves interpretation of a number of regulations. This section should also include legal models illustrating the wide range of alternative program designs that are possible.

The committee wishes to express its support for these recommendations.

FEDERAL RULE MAKING

Existing Legal Framework

Section 432 of GEPA (20 U.S.C. 1232a) generally provides that no provisions of Title I

> shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system....

This provision does not, however, prohibit the Commissioner from establishing "basic criteria". The Commissioner's authority to establish "basic criteria" was included in the original Title I legislation. The purpose of this grant of authority is to define and clarify Section 141(a) of Title I (20 U.S.C. 241e(a)) (LEA application requirements) and also to assist "State and local educational agencies in carrying out Title I and to assure" a reasonably uniform application of its provisions throughout the nation."*

Section 431 of GEPA (20 U.S.C. 1232) contains detailed requirements governing the promulgation of regulations** regarding the administration of federal education programs, including Title I.

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* S. Rept. No. 146, 89th Cong., 1st Sess. 1, reprinted in [1965] U.S. Code Cong. and Adm. News 1454.

** The 1976 Education Amendments defined the term "regulation" as "any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Commissioner". This definition is now incorporated in Section 431(a)(1) of GEPA (20 U.S.C. 1232(a)(1)).

The most important requirements set forth in the GEPA statute are: (a) each "regulation must include "citations to the section or sections of statutory law or other legal authority upon which such provision[s] [are] based;" (b) all Title I regulations must first be published in the Federal Register as proposed regulations; (c) during the 30 day period following this publication, the Commissioner must offer interested persons an opportunity to comment upon the "proposed regulation;" (d) if the agency decides to adopt a regulation as final, it must republish the regulation in the Federal Register; (e) all final regulations must be uniformly applied and enforced throughout the fifty states; and (f) concurrent with the publication of any "final regulation" in the Federal Register, the Commissioner must transmit a copy of such to Congress. "Final regulations" will "become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the [final regulation] is inconsistent with the Act from which it derives its authority...".

In accordance with the Education Amendments of 1976, Section 431 of the General Education Provisions Act now requires, among other things, that OE treat "interpretations" in the same manner as it treats substantive regulations with respect to publication in the Federal Register of a notice of proposed rulemaking, comment period, republication and submission to Congress.

Findings*

The Legal Standards Project concluded that OE should not be required to first publish their interpretations in proposed form subject to comments, republication and submission to Congress since, interpretations, unlike legislative rules, do not have the "full force and effect of law." A legislative rule implements the statute; whereas interpretations simply advise the public of the agency's construction of the statutes and rules which it administers. Moreover, application of legislative rule making procedures to interpretations discourages rather than encourages interpretation by OE when issues need clarification. The conclusion that OE be required simply to publish its "interpretations" in the Federal Register and not follow the procedure applicable to other legislative rules is not exceptional in any sense of the word. OE "interpretations" would then be subject to the same procedures most other Federal agencies now follow under sections 552 and 553 of the Administrative Procedures Act (5 U.S.C. 552, 553).

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* These findings are discussed in Part II of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

In section 3, strike out "(a)" after "Sec. 3." and strike out subsection (a).

At the end of the draft insert the following:

Proposed Rule-Making Amendment

"Sec. 5 (a) Subsection (b) of section 431 of the General Education Provisions Act is amended to read as follows:

"(b)(1) Except as provided in subsection (c), section 553 of Title 5, United States Code (relating to Federal rule-making proceedings generally), other than paragraph (2) of subsection (a) thereof shall apply to regulations promulgated for applicable programs.

"(c) The Commissioner shall not make a finding under clause (B) of the last sentence of section 553(b) of Title 5, United States Code (relating to an exception to procedural requirements for rule-making), with respect to a regulation until the expiration of ten days after he has notified the Committee for Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate of his intention to make the finding and neither of such Committees has, during such ten-day period, disagreed with such proposed action."

"(d) Subsection (d) of such section is amended by inserting after "as required in" the following:" such section 553 as made applicable by subsection (b)".

Proposed Language For Inclusion in the Legislative History

With two exceptions, this amendment makes "applicable programs" under the General Education Provisions Act subject to the rule making procedures set forth in Section 553 of the Administrative Procedures Act. The Amendment retains the existing policies of (a) requiring the Commissioner to notify the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate before he waives the applicable rule making procedures and (b) requiring the transmission of final regulations to Congress for review.

Provision of Services to Children and Attendance Areas Most In Need

Existing Title I Legal Framework

Under the Title I statute all educationally deprived children in school attendance areas or schools having high concentrations of children from low-income families are eligible to receive Title I services (the statute also provides an exemption for formerly eligible areas); however, since Title I is not fully funded, the Title I regulations establish priorities for determining both the attendance areas and the children actually to be served.

With respect to attendance areas, §116a.20(c)(1) of the regulations, commonly referred to as the "no-skip" provision, states that an LEA may not designate a school attendance area as a Title I project area "unless all attendance areas with a higher percentage or number of children from low-income families . . . have been so designated." The regulations provide for several exceptions, including an exception permitting an LEA to skip a higher ranked school if the lower ranked school has a substantially higher incidence of educational deprivation and an exemption permitting a local educational agency to skip a higher ranked school receiving under a SCE program services of the same nature and scope as would have been provided under Title I.

With respect to children, §116a.21(d) states that the educationally deprived children targeted to receive Title I services must be those "most in need" except if a child was deemed "most in need" in a previous year and is still educationally deprived.

Neither the Title I statute nor the regulations expressly address the question of whether Title I program participants may continue to receive Title I services if in mid-year they are transferred, pursuant to a desegregation plan or due, perhaps to a fire or other natural disaster, to a school not eligible to receive Title I funds.

Informal Office of Education documents, now superseded, discussed the principles applicable in such a situation. In general, OE's policy was that the eligibility of attendance areas is to be determined once a year. Specifically, OE interpretations provided that where new attendance areas were created in mid-year, eligibility need not be redetermined, i.e., a project area school may continue to be so designated even if many of the children most in need of assistance no longer reside in such project area. Further, OE letters indicated that the child who has been transferred in mid-term to an ineligible school may continue to receive assistance under Title I for the remainder of the school year.

Findings*

NIE and the Legal Standards Project have made several findings respecting the provisions in the existing Title I legal framework governing the eligibility and targeting of school attendance areas and children.

First, the general policy of ranking school attendance areas, from highest to lowest, based on a uniform measure of the concentrations of children from low-income families has existed, in one form or another, since 1968 as official OE policy. Second, there are four exceptions to the general targeting policy, two of which are contained in the statute (formerly eligible, use of enrollment data) and two of which are contained only in regulations (higher incidence of educational deprivation in lower ranked schools and skipping areas receiving SCE services of the same nature and scope as would otherwise be provided under Title I). The Legal Standards Project has drafted amendments to the statute to incorporate (a) the long standing general policy respecting the targeting of attendance areas and (b) all four exemptions presently constituting OE policy (only two of which are presently set forth in the statute).

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* These findings are discussed in chapters 2 and 5 of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

Third, the policy of requiring LEAs to focus limited Title I funds on children in greatest need of assistance has appeared in OE regulations since 1968. There are three exceptions to this general principle: formerly in greatest need, mid-year transfer, and skipping children receiving services of the same nature and scope under a SCE program as they would have received under Title I. The first appears in the regulations; the second appears in OE letters, and the third is implied by the existing regulations. The Legal Standards Project proposes to codify the existing policies.

Strike out section 32 of Tentative Draft and insert the following:

"Designating School Attendance Areas

"Sec. 32. (a) General Provisions--Except as provided in subsections (b), (c), (d), and (e) of this section, a local educational agency must use funds received under this title in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as 'eligible school attendance areas'), and where funds under this title are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest, according to relative degree of concentration of children from low-income families. The same measure of low-income, which shall be chosen by the local educational agency and which may be a composite of several indicators, shall be used with respect to all such areas, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area. A local educational agency may carry on a program or project assisted under this title in an eligible school attendance area only if it also carries on such program or project in other eligible school attendance areas which are ranked higher under the first sentence.

"(b) Use of Enrollment Data in Certain Schools--A local educational agency may use funds received under this title for educationally deprived children who are in a school of such agency which is not located in an eligible school attendance area, but at which the proportion of children in actual average daily attendance who are from low-income families is substantially the

same as the proportion of such children in such an area of that agency (hereinafter referred to as an eligible school).

"(c) Continuation of Eligibility for Certain School Attendance Areas or Schools--An eligible school attendance area or an eligible school may be designated a project area under subsection (a) or a project school under subsection (b) for a fiscal year, even though it doesn't qualify under such subsection, if such area or school was so designated in either of the two preceding fiscal years.

"(d) Lower Ranked School Attendance Areas or Schools Having Substantially Greater Incidences of Educationally Deprived Children Than Higher Ranked Areas or Schools--The Commissioner shall issue regulations providing for an exception to subsection (a) permitting children in lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than areas or schools ranked higher under subsections (a) or (b) to receive assistance before such children in higher ranked areas or schools receive such assistance.

"(e) Skipping Higher Ranked School Attendance Areas or Schools Receiving Services of the Same Nature and Scope from Non-Federal Sources--The Commissioner shall issue regulations providing for an exception to subsection (a) or (b) permitting local educational agencies to skip higher ranked eligible school attendance areas or eligible schools receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this title.

"Children To Be Served

"Sec. 33. (a) General Provisions--Except as provided in subsections(b),(c)and(d) of this section and section 43, a local educational agency must use funds received under this title for educationally deprived children identified in accordance with section 34(b) as having the greatest need for special assistance in school attendance areas or schools satisfying the requirements of section 32.

"(b) Continuation of Eligibility For Educationally Deprived Children Who Are No Longer In Greatest Need of Assistance--Where, for a fiscal year, an educationally deprived child in a school attendance area or school satisfying the requirements of section 32, does not meet the requirement of subsection (a) requiring that he be in greatest need of special assistance, but did meet such requirement in any previous year, and is still educationally deprived, that child may participate in a program or project assisted under this title for the current fiscal year.

"(c) Continuation of Eligibility For Educationally Deprived Children Transferred to Ineligible Areas In the Same Year--Educationally deprived children who begin participation in a program or project assisted under this title, in accordance with subsection (a), but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this title, may continue to participate in a program or project funded under this title for the duration of that same school year.

"(d) Skipping Children Determined to Be In Greatest Need of Assistance Receiving Services of the Same Nature and Scope From Non-Federal Sources--The Commissioner shall issue regulations providing for an exemption to subsection (a) permitting local educational agencies to skip educationally deprived children in greatest need of assistance receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this title.

Proposed Language For Inclusion in the Legislative History

The Congressional declaration of policy makes it readily apparent that funds made available under Title I constitute a grant made in trust to State and local agencies for the benefit of educationally deprived children residing in low-income areas.

This amendment clarifies the manner in which LEAs are to distribute Title I funds among eligible schools and children in order to insure that children in greatest need of special assistance residing in areas having the highest concentrations of low-income families are served first. The amendment codifies the long standing OE policy of requiring local educational agencies to rank, from highest to lowest, school attendance areas in accordance with incidences of children from low-income families. The existing statute provides for two exemptions to the general principles for designating project areas (use of enrollment data and the so-called formerly eligible provision). The amendment provides for two additional exceptions.

First, the amendment authorizes the Commissioner to promulgate regulations permitting local educational agencies to target lower ranked eligible areas or schools having substantially greater incidences of educational deprivation than higher ranked eligible areas or schools. To satisfy this exemption regulations must provide, at a minimum, that (1) the local educational agency use an objective measure of educational deprivation which is uniformly applied throughout the district, (2) schools skipped under this exemption are considered project area schools for the purpose of demonstrating comparability and (3) the local educational agency specifically demonstrates to the satisfaction of the State educational agency that it is complying with the applicable requirements of the amendment and the regulations promulgated thereunder.

Second, the amendment authorizes the Commissioner to promulgate regulations permitting local educational agencies to skip higher ranked eligible school attendance areas or schools where such areas or schools are receiving, under a special State or local program, services of the same nature and scope as they would have received under Title I. Regulations should define the phrase "same nature and scope" to provide, at a minimum, that local educational agencies must: (1) demonstrate comparability in schools which are skipped and (2) establish for the schools which have been skipped, advisory councils composed of members selected in a manner similar to those of advisory councils established pursuant to Section 35(a) and with rights and duties of the council similar to those of councils established pursuant to Section 35(b) which shall advise the local educational agency in the planning for and the implementation and evaluation of programs and projects of the same nature and scope as those that would have been provided under Title I. In addition, the regulations should indicate that in cases in which children attending private schools are not receiving, from non-Federal sources, services of the same nature and scope as they would have received under Title I, the local educational agency must determine and serve children attending private schools according to the general principles for targeting areas under subsection (a) and the exceptions contained in subsections (b), (c), and (d) but without regard to subsection (e). The regulations should also indicate that this exemption is not to be construed to increase the number of children attending private schools who must receive assistance. In sum, all determinations must be made as if this exemption did not exist.

The amendment also clarifies existing OE policy respecting the selection of data sources for purposes of making targeting decisions. Although local educational agencies have considerable discretion in choosing the measure of low-income to use in ranking schools or attendance areas, the amendment provides that once a measure is selected, such measure must be uniformly applied. The need for this amendment is based on data from the NIE National Survey which suggests that some districts which use several poverty measures are not applying these measures consistently and that the districts appear to be selecting some schools using one criterion and other schools based on a different criterion.

Finally, current OE regulations provide that any school attendance area with 30% or more children from low income families (based on eligibility for free lunch) may be designated a target area. A problem with this rule is that it requires the use of free lunch data even though many districts use Census, AFDC or other economic data to determine district-wide poverty and attendance area eligibility. Limiting the percentage exception to schools which qualify under the free lunch criterion can thus have the effect of setting two different standards for school eligibility. Regulations should be modified to specify that attendance areas may qualify for the percentage exception on the basis of the most current available poverty data used by the district to determine the district-wide poverty average.

With respect to the targeting of children, this amendment reemphasizes that Title I funds must be used to meet the needs of children in greatest need of special assistance; however, the amendment provides an exemption from this general requirement for children who were determined to be in greatest need of assistance in a previous year but who, in the following year, while still considered to be educationally deprived, are no longer in the greatest need of assistance. The amendment also provides that children who were properly enrolled in a Title I program but who have been transferred in mid-year to a non-participating school prior to completion of that program may continue, for the duration of the year, to receive Title I services. The purpose of this special eligibility is to minimize disruption of the educational program of children in accordance with a mid-year desegregation order or due, perhaps to a fire or other natural disaster. The special eligibility created by this amendment cannot by itself be the basis for eligibility of children in years after the year of the transfer. After that year, children must either reside in a project area or attend a project area school. Finally, the amendment authorizes the Commissioner to allow a local educational agency to skip a child residing in a Title I area who is in greatest need of assistance if that child is receiving services, from non-Federal sources, of the same nature and scope as would otherwise be provided under Title I.

NEEDS ASSESSMENT

Existing Title I Legal Framework

The Title I legislation* requires, in part, that programs and projects must be "designed to meet the special educational needs of educationally deprived children." LEAs must conduct a comprehensive needs assessment in order to design programs or projects which will meet the "special educational needs" of educationally deprived children residing in low-income areas. The needs assessment requirement, as set forth in the regulations, prescribes a process of inquiry and analysis which has two major interrelated purposes. The first purpose is to generate data on which to base child targeting decisions. To this end, data is gathered to identify the children who are educationally deprived and "most in need" in general instructional areas.

The second purpose of the needs assessment requirement is to generate data on which to base program design decisions. To this end, data is reviewed which will aid in determining in greater detail the incidence and severity of the needs of actual program participants. This process includes an attempt to determine the factors contributing to children's learning problems. This will enable the LEA to design programs which will address the special educational needs of the program participants.

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* Section 141(a)(1) of Title I (20 U.S.C. 241e(a)(1)).

Purpose 1: Generate Data for Child Targeting Decisions

The first step LEAs must follow to generate data for child targeting decisions is to review "appropriate existing data" * including, but not limited to, past Title I evaluations and "data on the performance in the [LEA's] basic programs of instruction of children residing in all eligible attendance areas." **

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* The Comments to the revised regulations indicate that: where feasible, the use of existing data is authorized to ease the annual data-gathering burden on [LEAs]. However, since eligible attendance areas may change every year, and annual evaluations required by the statute must be examined to make appropriate changes to the project, some data will probably need to be collected every year. Comment 1 to §116a.21, 41 FR 42898 (September 28, 1976).

** 45 C.F.R. §116a.21(a)(1976). The needs assessment section of the proposed regulations (§166a.21, 40 FR 11482, March 11, 1975) had required that the educational deficiencies of children in reading, written communication and mathematics be documented for purposes of generating data for child targeting decisions. Commentors to the revised regulations indicated that the emphasis on reading and mathematics was too restrictive. Consequently, the generic phrase "basic programs of instruction" was incorporated in the revised regulations to give the LEAs "more flexibility in performing their needs assessments." Comment 2 to §116a.21, 41 FR 42898 (September 28, 1976).

This must be done to "determine the incidence and severity of educational deprivation among all children residing in an eligible attendance area."* (Emphasis added.) The scope of this required review includes (1) children enrolled in public schools; (2) children enrolled in private schools; (3) pre-school children; (4) children of school age not enrolled in schools; and (5) children in local institutions for neglected or delinquent children.**

The LEA, based on its review of existing data, must then select the general groups of children that will be considered for participation in the Title I program, e.g., the "age or grade levels at which it will operate the Title I project (or projects)."*** (A decision which must be made concurrently is the identification of the types of educational needs the Title I program will focus on. This decision falls within the second purpose of the needs assessment requirement, i.e. generate data for program design decisions, and will be discussed in the next section.)

Once the general target groups of children have been chosen, a LEA must identify all the educationally deprived children within the project area who are in the selected age or grade levels and who have the types of educational needs the Title I project will address.*

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* 45 C.F.R. §116a.21(a)(1976).

** Id.

*** 45 C.F.R. §116a.21(b)(2)(1976). It is important to note that on various occasions, OE has expressly permitted SEAs to limit the discretion of the LEAs within their state with respect to the determination of which grade

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(footnote continued from previous page)

spans may participate in Title I funded programs. OE based this authority to set such guidelines on the SEAs' legal responsibility to determine whether an application has "sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs" of educationally deprived children. 45 C.F.R. §116a.22(b)(1976).

This rationale was recently employed in a letter to a Senator concerning an SEA requirement that LEAs use standardized tests as criteria for the final selection of students. This letter (1976) provided, in relevant part, that

> "while we have refrained from prescribing particular types of measurements, we have consistently held that it is within the authority of the SEA to set basic requirements concerning the selection of participants in Title I programs . . . . On the basis of its knowledge of sources of information available to the applicant LEAs on the educational status of pupils, the SEA may require a standardized test score for final selection of the students who are to receive services and approve only those applications which meet this requirement."

* 45 C.F.R. §116a.21(c)(1976).

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Following, or simultaneous with, this decision, LEAs must secure necessary "additional objective data" for purposes of identifying which of these children are "most in need of special assistance".* This determination requires comparison of the educational achievement of children within the general targeted groups. For example, if the third grade is the selected grade level at which the LEA will operate the Title I program, identification of those children "most in need" will involve comparison of individual third grade students. It will not require comparison with students of another grade level.

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* 45 C.F.R. §116a.21(d)(1976). On numerous occasions OE has interpreted the phrase "greatest need" to be synonymous with "most in need", i.e., furthest behind. For example, a 1974 OE letter explained that:

> although the needs assessment provides a basis for the criteria for selection of educationally deprived children, actual practices discovered skewed the selection of children in favor of those with more potential rather than those with the greatest educational deficiencies. To illustrate: the instructions to teachers for the selection of participants in the Title I reading classes . . . included in effect the statements, 'select those most likely to succeed' and 'within the identified group select those with potential to progress.' It is recommended that Title I participants be selected according to two factors: the number of needs or deficiencies and the intensity of these needs. Children should be ranked sequentially according to these factors and selected in order of need, the greater to the lesser.

The confusion concerning the meaning of the phrase "greatest need for assistance" to include children who showed "potential for success" may have arisen as a result of a sentence which appeared in Program Guide #44, Section 4.2 which provided that: "Title I resources should be concentrated on those children who are most in need of special assistance. Normally this process will involve determinations of both the needs of individual groups of children and of the possibilities for success in working with those groups."

Purpose 2: Generate Data for Program Design Decisions

Afteran LEA has reviewed existing data to determine the "incidence and severity of educational deprivation" in eligible attendance areas, it must determine the "types of educational needs to be addressed by these [Title I] projects."* This determination, as explained supra, must be made concurrently with the decision as to which age or grade levels the Title I project will focus on.

Once the actual program participants have been chosen (those who are "most in need" and who otherwise qualify for selection -- see chapter on Targeting), the LEA must use "adequate diagnostic procedures to determine the special educational needs of the children to be served." ** This determination is a more detailed analysis of the incidence and severity of the participating children's educational needs with respect to selected instructional areas for Title I focus. A related needs assessment requirement is to discover other factors contributing to the program participants' educational needs, e.g., non-instructional needs which must be met.

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* 45 C.F.R. §116a.21(b)(1976).

** 45 C.F.R. §116a.21(f)(1976). An SEA, in 1975, requested clarification from OE concerning the use of Title I funds for satisfying various aspects of the needs assessment process. OE explained that "testing of all children in an eligible Title I school is not a permissible expenditure of Title I funds.... Once the educationally disadvantaged children have been identified by the target school, Title I funds may be used to gather additional data to diagnose their particular needs, to determine the specific services to be offered, and, based on such data, to select from the educationally disadvantaged, those children who will actually receive services corresponding to their needs."

III. Consultation Requirement

At every stage of the needs assessment process, the LEA must, to the extent feasible, consult with "teachers, parents, and persons knowledgeable of the needs of private and public school children and children in local institutions for neglected or delinquent children."*

IV. Scope of Information Provided to SEAs in the LEA Application

The regulations** require that the LEA's annual application contain "sufficient information and documentation" to enable the SEA to determine that the LEA has taken the required needs assessment steps which are described in the preceding paragraph.

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* 45 C.F.R. §116a.21(g)(1976). The consultation requirement is also discussed in relation to other Title I requirements.

** 45 C.F.R. §116a.21(1976).

Finding*

The needs assessment provision is one of the most important, if not the most important program development requirements. Virtually all other program design decisions can be made only after a needs assessment has been completed. Based on interviews conducted at the state and local levels, NIE and several of its contractors found that many Title I administrators perceived the needs assessment regulation as having special significance for many of the regulations relating to the distribution of Title I funds. They found that many Title I administrators felt that if an LEA acts consistent with its needs assessment, there is little likelihood that the district will violate the general aid and the supplement, not supplant, provisions.

Despite the importance of the needs assessment provision, and its inclusion as part of the regulations since the inception of Title I, there is strong evidence suggesting that districts do not fully understand this regulation and that compliance with it is far from complete. NIE and its contractors have found that needs assessment is one of the most commonly misunderstood requirements. A recent report by the ComptrollerGeneral reinforced this point by indicating that compliance with this essential requirement was inadequate**.

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* These findings are discussed in chapter 4 of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

** Comptroller General of the United States, Assessment of Reading Activities Funded Under the Federal Program of Aid for Educationally Deprived Children, Report to Congress, MWD-76-54, December 12, 1975, at 17-19.

Recent amendments to regulations now clarify and strengthen the needs assessment requirement considerably. Express inclusion of this requirement in the statute would substantially assist OE in its efforts to improve both compliance with the law and the quality of educational services. The draft prepared by the Project would codify existing OE policy. In addition, proposed legislative history pulls together, in a single description, the various components of the needs assessment requirement.

Amendment to Tentative Draft

(Relating to assessment of educational need)

Amend section 33 by redesignating subsection (b) through (h) as (c) through (1), respectively, and insert after subsection (a) the following new subsection:

"(b) Assessment of Educational Needs -- A local educational agency may receive funds under this title only if it makes an assessment of educational needs each year to (1) identify educationally deprived children and to select those educationally deprived children who have the greatest need for special assistance; (2) identify the general instructional areas on which the program will focus, and (3) determine the special educational needs of participating children with specificity sufficient to facilitate development of high-quality programs and projects.

Proposed Language for Inclusion in the Legislative History

In 1975 the Comptroller General reported that over a third of both the LEAs and the SEAs included in a survey "said they had received insufficient guidance . . . on how to make and document needs assessments." This amendment supports OE's recent efforts to remedy this problem.

The needs assessment requirement, as set forth in the amendment, prescribes a process of inquiry and analysis which has two major purposes. The first purpose is to generate data on which to base child targeting decisions. To this end, existing data are reviewed to identify the children who are educationally deprived. Additional data are then gathered, if necessary, and reviewed to determine which children are in greatest need of *assistance. The second purpose of the needs assessment requirement is to generate data on which to base program design decisions. To this end, existing data is reviewed to determine the general instructional areas on which to focus. Additional data is then gathered, if necessary, and reviewed to determine, in greater detail, the incidence and severity of the needs of actual program participants. This process includes an attempt to determine the factors contributing to children's learning problems.*

In sum, a proper needs assessment forms a sound basis on which to plan the utilization of Title I funds. LEAs which design programs directly responsive to the special needs of program participants identified in their needs assessments should have little difficulty complying with fund use or distribution provisions such as the prohibition against supplanting and the prohibition against use of Title I funds for general aid purposes.

The needs assessment activities required by this amendment must be read in conjunction with other requirements specifying (1) that Title I programs must be focused on meeting the needs of educationally deprived children residing in low-income areas; (2) that program designs must be of sufficient size, scope, and quality and (3) that research and evaluation information must be employed in considering the design of Title I programs. These requirements, when viewed as a whole, establish the program development process. It is expected that the following steps will be followed in the design of Title I programs.

First, applicants will decide the general instructional areas on which the program will focus, e.g., reading and language arts, and the general target groups, e.g., elementary versus high school. These steps are premises for the more comprehensive needs assessment and program design decisions which will be made subsequently. These decisions may be based on existing data and on value preferences or educational theory as to the effectiveness of focusing on a particular instructional area and working with a particular group of children. Of course, an applicant may gather empirical evidence and formulate a more precise means of assessing which areas and which groups need help most. Children not in the targeted general groups need not be included in the more detailed needs assessment steps described below. Similarly, the assessment of instructional needs may be limited to the selected general instructional areas.

Second, the applicant must discover the educationally deprived children, using existing data, and then determine those in greatest need of special assistance.

Third, the applicant must decide the actual program participants, employing specific criteria. This step must be based on the policy of selecting first those who are in greatest need of assistance or those children who were in greatest need in a previous year and are still educationally deprived. The determination of those having the greatest need requires only comparison of the educational attainment of children within the same targeted group. For example, applicants deciding to focus their Title I funds at the secondary level need not document whether a tenth grader has greater need than an individual third grade student. In sum, once the actual program participants have been selected, only they need to be included in the more detailed needs assessment steps to follow.

Fourth, the applicant must discover, in greater detail, the needs of the targeted children in general instructional areas and discover factors contributing to the program participants failure to perform at a level appropriate for children of their age. This needs assessment step is more refined than earlier steps. The purpose of this step is not just to conduct a general review or to determine who should receive services but to discover in detail which precise needs must be met. This step should also identify whether certain special needs could best be met through non-instructional support services.

Fifth, the applicant must decide the objectives and sub-objectives and decide the particular activities and services to be offered. The discovering of needs leads directly to the establishment of objectives which in turn forms the basis for the decisions respecting the instructional strategies chosen. Resource constraints necessarily limit the extent to which activities and services can be provided to the program participants, but the primary impact of resource constraints must fall on the number of participants and the number of general instructional areas selected for emphasis in previous steps. Participants and general instructional areas must be limited so that sufficient funds are available to provide all the activities and services which will ensure each program participant a fully adequate opportunity to accomplish the established objectives.

The needs assessment activities required by this amendment must be read in conjunction with Section 34(h); which requires effective employment of research and evaluation information in the design of Title I programs. Research and evaluation information should be considered, along with needs assessment results, in the on-going modification and improvement of Title I programs.

Program Design

Existing Title I Legal Framework

Section 141(a)(1)(A) of Title I provides that Title I projects must be specifically "designed to meet the special educational needs of educationally deprived children...".

OE, in correspondence with State and local school officials has prescribed the circumstances under which an LEA may design a full-day pull-out program.

(1) programs are substantially different in quality and content from services offerred children in regular classrooms and are designed to meet specific needs of the children to be served,

(2) personnel and all other resources provided children enrolled in regular classrooms are also provided to children who are participating in a Title I program, and

(3) any negative effects of the temporary isolation of the children in the full-day pull-out class must be outweighed by the positive effects that have been shown as the result of participation in the program.

Findings and Proposed Language For Inclusion In The Legislative History

Elementary Versus High School

NIE found that fewer than 1% of public high school students (grades 9-12) in K-12 districts receive compensatory education services, compared to 20% of public elementary school students (grades K-8). Many districts give priority to elementary school children because they believe these children can receive the greatest benefit from special services. However, districts are also reluctant to conduct high school programs because they are uncertain about the type of programs which would be legal.

The committee wishes to re-emphasize that Title I is not solely a program for elementary school children. It is expected that the Commissioner will clearly indicate in regulations that the federal government is neutral with respect to the focus of Title I programs. This neutrality will best be indicated by the inclusion of legal models in OE regulations indicating the proper resolution of legal issues that might arise when Title I funds are used either in the elementary or secondary schools.

Pull-Out Versus In-Class Programs for Compensatory Education Services

An important issue for some State and local school officials is whether Title I requires or encourages a particular instructional strategy. An NIE contractor concluded that Title I neither requires nor encourages any particular instructional strategy. Nevertheless, the same NIE contractor concluded that some State and local officials expressed the point of view that HEW auditors, in fact, encourage one particular instructional strategy; namely, the pull-out design. The committee wishes to emphasize that Title I should not be construed to encourage or require any particular instructional strategy. OE should develop regulations which inform program administrators how to design "in-class" as well as "pull-out" programs. This policy of neutrality is supported by NIE's research which did not show one setting was considerably more effective than another.

Separation of Compensatory Education Students for Compensatory and Regular Services

NIE found that many compensatory education students are assigned to homerooms exclusively with other compensatory education students. NIE survey data suggest that these students--one fourth of all compensatory students--are separated from higher achieving students for the entire school day. The Committee wishes to emphasize that the separation of compensatory education students from higher achieving students for the entire school day is not required by Title I, is not a necessary aspect of compensatory instruction, and to the extent possible, should be avoided. To the extent educationally deprived children receive all of their instruction in a separate setting from higher achieving students, the applicant must be able to show that program participants are receiving their fair share of State and local funds and that programs are substantially different in quality and content from services offerred children in regular classrooms and are designed to meet specific needs of children to be served.

Proportional Distribution of Title I Funds

Existing Title I Legal Framework

Although existing regulations expressly provide that attendance areas with higher percentages of children from low-income families must receive Title I funds to support a program of "sufficient size, scope and quality" before similarly disadvantaged children in lower ranked areas receive assistance, there is no express requirement that program participants in areas with higher concentrations of children from low-income families receive funds in proportion to the needs of educationally deprived children in those areas.

The only written policy concerning proportional distribution developed by OE was contained in section 4.6 of Program Guide No. 44, which has been cancelled.

> The applicant's Title I program will be conducted in a limited number of eligible attendance areas and will provide relatively higher concentrations of services in areas having the highest incidence of poverty.
>
> Authority: 20 USC 241e(a)(1)
>
> The applicant should make sure that the needs of children in eligible areas with the highest incidence of poverty have been met before considering the needs of children in eligible areas in which the incidence is much lower. The program in the areas with the highest incidence should be designed to serve a larger proportion of children and to provide them with a greater variety of services than programs in areas with lesser incidences of poverty.

Findings

After target schools are identified, districts must still decide how much money will be allocated for Title I services. As noted above, the regulations provide very little guidance to LEAs in making this determination, beyond requiring that services be concentrated on a limited number of students in greatest need. Districts must make difficult decisions that balance the kinds and costs of services they wish to provide against the number of students they wish, or are able, to serve.

In making these resource allocation decisions, NIE found* that almost half the districts (45%) attempt to distribute Title I resources based on a measure of educational need. Because student participants are selected on the basis of educational criteria, this means that the school districts allocate resources to schools roughly in proportion to their numbers of low-achievers, rather than of poor children. Other districts distribute their Title I funds in proportion to the number of low-income students in each target school. The rest of the districts use extremely vague rules for allocating resources, and the level of funding per child might vary substantially from school to school. Some district personnel speak generally about focusing on the "greatest educational need" or relating resources to the "severity of the problem." One district apparently decided to fund a program in one school because the school had an unused classroom that could be used for pullout purposes. Another asked school principals how many teachers they needed and negotiated among them until all were satisfied with the final decision.

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* Title I Funds Allocation: The Current Formula, NIE (Septmeber 30, 1977).

In sum, under the existing legal framework, there is no assurance that schools with the highest concentrations of either low-income or low-achieving children will receive the greatest amount of Title I resources, or that funds will be allocated in a systematic fashion. The Legal Standards Project has drafted an amendment to the statute which would require that Title I funds be distributed systematically in accordance with a uniform district policy. The amendment provides LEAs with discretion to base their distribution decision on the number of program participants, i.e., educationally deprived children in greatest need of assistance OR the number of children from low-income families.

Statutory Amendment

After section 34(d), insert the following new subsection:

"(e) Expenditures Related to Ranking of Eligible School Attendance Areas or Schools--(1) A local educational agency may receive funds under this title only if it meets the requirements of paragraphs (2) or (3).

"(2) To meet the requirements of this paragraph, the expenditure, per pupil participating in any project area or project school, for programs and projects assisted under this title may not be less than such expenditures in any such area or school which is ranked lower under section 32(a).

"(3) To meet the requirements of this paragraph, the expenditure, per child from a low-income family, in any project area or project school, for programs or projects assisted under this title may not be less than such expenditures in any such area or school which is ranked lower under section 32(a). For the purpose of this paragraph, the same measure of low-income shall be used as is chosen under the second sentence of section 32(a).

Proposed Language For Inclusion In The Legislative History

NIE found that the existing Title I legal framework provides little guidance to local school districts concerning the allocation of Title I funds among designated project areas. In making resource allocation decisions, NIE found that almost half the districts (45%) included in a national survey attempted to distribute Title I resources based on a measure of educational need. Because student participants are selected on the basis of educational criteria, this means that the school districts allocate resources to schools roughly in proportion to their numbers of low-achievers, rather than of poor children. Other districts distribute their Title I funds in proportion to the numberof low-income students in each target school. The rest of the districts use extremely vague rules for allocating resources, and the level of funding per child might vary substantially from school to school. One district apparently decided to fund a program in one school because the school had an unused classroom that could be used for pullout purposes. Another asked school principals how many teachers they needed and negotiated among them until all were satisfied with the final decision.

This amendment requires that local educational agencies device a systematic method for distributing Title I funds so that similarly disadvantaged children receive their fair proportion of Title I funds. The amendment permits school districts to distribute Title I funds based on concentrations of children from low-income families OR on the incidence of educational deprivation.

Coordination of Title I Services With Other Federal, State, and Local Programs

Existing Title I Legal Framework

Section 116.41(a) of the Title I regulations states that LEAs, in planning Title I programs, must (1) take into consideration relevant "benefits which are or may be available through other public and private agencies," (2) consider "suggestions and offers of assistance" by these agencies, and (3) disseminate their Title I applications to these agencies "far enough in advance of final formulation to enable such agencies to make meaningful suggestions and offers."

Finding*

Although the regulations promulgated by OE are clear, there is no express statutory authority mandating coordination of Title I with other programs. The Legal Standards Project has drafted a statutory amendment incorporating existing OE policy.

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* These findings are discussed in chapter 14 of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

Amendment to Tentative Draft

(Relating to coordination of Title I programs with other programs)

Amend section 33 by inserting the following new subsection after subsection (d) and renumber the following sections accordingly:

"(f) Coordination With Other Programs--A local educational agency may receive funds under this title only if it demonstrates that, in the development of its application, it has taken into consideration benefits and services which are or may be available through other public and private agencies, organizations, or individuals. The local educational agency shall also demonstrate that in order to avoid duplication of effort and to ensure that all programs and projects complement each other, it has considered suggestions and offers of assistance made by other agencies which may aid in carrying out or making more effective the program or project for which the application is made.

__Proposed Language For Inclusion in the Legislative History__

In accordance with this amendment pertaining to the coordination of Title I programs with other Federal, State, and Local programs, local educational agencies are expected to avoid using Title I funds for services that could be supplied by another agency and avoid duplication of effort by considering suggestions made by other agencies concerned with improving the educational attainment of educationally deprived children residing in poor areas.

The Purpose of the Supplement, Not Supplant Provision and the Application of the Supplanting Provision to the Distribution of Special State and Local Funds

Existing Legal Framework

The basic purpose of the "supplement, not supplant" provision of the Title I statute is to ensure that Title I funds are used to provide and pay only for supplementary programs designed to meet the "special" educational needs of educationally deprived children residing in low-income areas. These provisions prohibit LEAs from discriminating against children participating in Title I programs in the provision of state and local funds because such children are receiving federal assistance.

The existence of Title I funds may not be taken into consideration when the school district distributes regular and compensatory education funds from state and local sources to educationally deprived children. When state and local funds are distributed, educationally deprived children residing in low-income areas may not be "penalized".

The supplement, not supplant regulations require that the use of Title I funds not result in a decrease in the level of state and local funds that "would be made available" to educationally deprived children but for the existence of Title I funds.

Furthermore, OE regulations state that services provided with state and local funds must be "equitably provided to all children . . . without regard to the availability of Title I funds." Specifically, the revised regulations state that the SEA may not approve a Title I application unless it has determined that

> services are equitably provided to all children with state and local funds without regard to the availability of Title I funds in the applicant's schools for the educationally deprived children.*

This provision also implements the statutory requirements that Title I funds be used to meet the special educational needs of educationally deprived children and that Title I funds are supplemental by requiring that educationally deprived children in low-income areas receive an equitable share of services provided with state and local funds.

The preamble to the revised regulations explains that the "equitably provided" clause replaces, in part, the "ordinarily provided clause** and applies directly to SCE programs:

> Comment. Several comments expressed concern about, or requested clarification of the term "ordinarily provided" as it was used in subparagraph (a)(2), particularly as it applies to State and locally funded compensatory programs.
> Response. The clause containing this term was deleted. Since other provisions of the regulations clearly indicate that services generally provided for all children are not to be paid for from Title I funds there is no need for this clause. A similar provision has been inserted in §116a.22(b)(10), and modified to address the issues of the use of Title I funds by local educational agencies when State and local funds are being used for purposes that are similar

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* §116a.22(b)(10), 41 FR 42919 (September 28, 1976).

** The "ordinarily provided" requirement stated: "No project under Title I of the Act will be deemed to have been designed to meet the special educational needs of educationally deprived children unless the federal funds made available for that project (3) will not be used to provide instructional or auxiliary services in project area schools that are ordinarily provided with state and local funds to children in non-project area schools." 45 C.F.R. §116.17(h)(3)(1974).

to those of Title I.*

Letters written by OE in the last few years indicate that the equitably provided standard was applied by OE even prior to the issuance of the revised regulations. These letters further clarify the development and meaning of this standard. In a letter to one state, OE used the concept of equitably provided to explain that Title I areas may not be subject to discrimination in the distribution of SCE funds.

> If ...a local educational agency using State funds were to provide specific compensatory education services exclusively for children in areas not designated for projects, that agency would be violating the provisions of Section 141(a)(3)(B) of Title I and the regulation in 45 C.F.R. §116.17(h) prohibiting the supplanting of State and local funds. ...
>
> The local educational agency would not be complying with the foregoing if it attempted to provide compensatory education services in the Title I areas with Title I funds and to provide similar services in the non-Title I areas with State or local funds. Any State compensatory education program, therefore, should be established so as to make it available on an equitable basis to Title I and non-Title I areas. [Emphasis added.]

More recently, OE stated this policy with greater refinement:

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* 41 FR 42896 (September 28, 1976). The preamble repeats this point at 42903:

> As indicated in the comments on §116.40, the provision concerning services 'ordinarily provided' with state and local funds is now found in §116a.22 (b)(10), and has been modified to address the use of Title I funds when state and local funds provide services that are similar to those provided under Title I.

First of all, the local educational agency for the newly organized school district should determine how and to what degree various educational services should be provided in the schools of the district. Any such service which cannot be provided for all children must, however, be equitably distributed in Title I and and non-Title I areas before the local educational agency may consider replicating that service with Title I funds (if it meets Title I criteria) or supplementing that service with Title I funded services. The distribution of such a service to children in Title I and non-Title I areas must be in proportion to the number of children in those areas who qualify for that service according to objective criteria.

Under the foregoing conditions the local educational agency could use Title I funds to provide similar services in Title I areas that cannot be reached by the State and locally funded program or to supplement such programs in ways that meet Title I criteria. In the event that more State-local funds become available for such service the principle of proportionality in the distributions of such services among children in Title I and non-Title I areas would have to be maintained.

As you may know, the House Report on the Education Amendments of 1974 indicated a desire on the part of Congress to encourage the use of State and local funds for compensatory education programs. The Office of Education also wishes to encourage the use of State and local funds for this purpose but with the understanding that children in need of such services in Title I areas must have an equal opportunity to receive such services with equally needy children in non-Title I areas. A disproportionate distribution in non-Title I areas of State and locally funded compensatory education programs would preclude the use of Title I funds for similar programs. [Emphasis added.] *

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* Under the revised regulations, equitable provision

In sum, these letters explain that the distribution of SCE services must be in proportion to the number of educationally deprived children residing in Title I and non-Title I school attendance areas* who qualify for the services according to objective criteria, e.g. all children below the 25th percentile in reading.

(footnote continued from previous page)

of SCE services to Title I areas is a requirement LEAs must meet in order to be eligible at all for Title I funds. The original "ordinarily provided" clause was a restriction on how Title I funds could be spent, rather than a threshold eligibility requirement. This is reflected in the last sentence of the quoted letter, which was written prior to the promulgation of the revised regulations.

* The letters do not, however, expressly clarify whether the phrases "Title I areas" and "children in Title I areas" mean eligible areas and children or areas and children actually receiving Title I funds. Nonetheless, OE has consistently interpreted the equitable provision concept as applying to eligible areas and children, taken as a whole.

Finding

NIE and the Legal Standards Project have made several findings respecting the supplement, not supplant provision in the existing Title I Legal framework. The findings are broken down into two distinct areas of inquiry. First, we analyzed the relationship between the supplement, not supplant provision and the distribution of regular State and local funds.* Second, we analyzed the relationship between the supplement, not supplant provision and the distribution of State and local compensatory education funds.**

Distribution of Regular State and Local Funds

With respect to the relationship between the supplement, not supplant provision and the distribution of regular State and local funds, NIE and the Legal Standards Project made the following general findings. First, the provision is necessary to ensure that children participating in Title I programs receive their fair share of State and local funds. Second, the provision provides adequate flexibility to LEAs with respect to the design of innovative programs.

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* These findings are discussed in chapter 9 of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

** These findings are discussed in chapter 8 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

Third, the regulations are not sufficiently clear because they do not take into consideration the needs of State and local administrators. Although the regulations set forth the applicable standards and principles concerning supplanting, the regulations (1) do not contain all of the tests developed by OE for judging compliance with the statute, despite the fact that many of these tests have existed since 1968 and (2) do not include examples or models explaining how these principles apply to day to day situations occurring within the schools.

This lack of sufficient clarity increases the likelihood that (1) LEAs will not comply with the provision and (2) State and local educational agencies will pursue overly restrictive policies. With respect to the pursuit of overly restrictive policies, NIE and the Legal Standards Project found that some state and local administrators incorrectly believe that Title I requires the use of the pull-out design.

Portions of the proposed language for inclusion in the legislative history address these findings. Specifically, the proposal (1) restates the general purpose of the supplanting provision, i.e., children participating in Title I programs must receive their fair share of State and local funds, (2) restates the general finding that the provision is necessary and provides sufficient flexibility but is not sufficiently clear, (3) includes language mandating that OE regulations include all tests it uses for determining compliance as well as examples and models explaining how the provision operates, depending on the instructional strategy chosen.

Distribution of State Compensatory Education Funds

With respect to the application of the supplanting provision to state compensatory education funds, the Legal Standards Project found that the regulations are not sufficiently clear. OE has developed a reasonable policy respecting the issue; however, this policy exists primarily in a series of interpretations (in letters) which have not been published in the Federal Register or otherwise disseminated on a broad scale.

The major aspects of OE's policy which need clarification are as follows. First, OE policies respecting state compensatory education funds ensure that educationally deprived children residing in poor areas receive their fair share. This standard is different than that used with respect to regular State and local funds which is that children participating in the program must receive their fair share of State and local funds. The focus on educationally deprived children adds significant flexibility to LEAs with respect to the number of children who can be served. Instead of requiring a particular child participating in Title I to receive regular State and local funds, SCE and Title I funds, the focus on educationally deprived enables the LEA to use SCE funds for children eligible for but not receiving Title I as well as for children qualifying for SCE funds residing in areas ineligible for assistance under Title I. Although the different standard is used, the existing statute does not recognize the difference, i.e., the statute reads "children participating in programs . . .". The Legal Standards Project has drafted a statutory amendment to clarify existing OE policy.

Second, OE's policy respecting the coordination of Title I and SCE needs clarification. As explained supra, the purpose of the supplanting provision is to ensure that educationally deprived children residing in poor areas receive their fair share of SCE funds. It is not the purpose of this provision to prohibit joint planning and coordination of Title I and SCE programs, or the joint distribution of Title I and SCE funds under certain specified conditions. However, a literal reading of the statute which states, in relevant part, that Title I funds must supplement, not supplant the level of funds "that would, in the absence of such Federal funds" be made available from State and local sources, suggests that an LEA can never take into consideration the existence of Title I. OE policy is that an LEA cannot take into consideration the existence of Title I if the effect is to reduce the amount of SCE funds which would have been made available; however, an LEA can take into consideration the existence of Title I if no discrimination results. The Legal Standards Project has addressed this issue in the proposed language for inclusion in the legislative history. The key components of the statutory proposal are: (1) the requirement that an LEA device a plan for distributing SCE funds based on clearly phrased objective non-discriminatory criteria and (2) non-discrimination be judged with reference to educationally deprived children, in the aggregate, satisfying the objective criteria and not with reference to whether any particular child has been discriminated against. This proposal would codify existing OE policy. The proposed legislative history adds further clarifications with respect to the application of the statutory provision. The legislative history provides, among other things.

that children residing in Title I areas who are in greatest need of assistance may receive SCE funds in lieu of Title I only if they receive services under such SCE program of the same nature and scope as would otherwise be provided under Title I. This proviso is also a reiteration of existing OE policy.

Amendment To Tentative Draft

(Relating to the application of the supplement, not supplant provision of special State and local funds)

After section 35(c), insert the following new subsection:

"(d) Federal Funds Required to Supplement, Not Supplant Non-Federal Funds for Certain Special State and Local Programs -- A local educational agency may use funds received under this title only so as to supplement and ,to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for each of the special programs described in subsections (b) and (c) of Section 41 for the education of educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools and in no case, as to supplant such funds from non-Federal sources. It shall not be considered a violation of this subsection for a local educational agency, in carrying out a special program described in subsection (b) and (c) of section 41, to take into consideration funds made available under this title, and to coordinate such special programs with programs using such Federal funds, provided that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of such special State and local funds that would have been made available to such children in the absence of funds under this title. For purposes of this subsection, the level of funds that, in the absence of funds under this title would have been made available to such children shall be determined by reference to a plan for distributing such special funds. Such plan shall be based on objective criteria of need that do not discriminate against educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools. The objective criteria chosen by the local educational agency shall prescribe, with particularity, the children as well as the schools, grade-spans, or school attendance areas eligible for assistance and the method for selecting the particular children who will receive assistance under such special state or local program and the schools or grade-spans which such children attend or the school attendance areas in which such children reside. The criteria for selecting children, schools, grade-spans, and school attendance areas for participation shall be either educational need, a reasonable proxy for educational need, level of poverty, or a combination of such factors. Educationally deprived children residing in eligible school attendance areas or attending eligible schools, satisfying such objective criteria, must receive assistance under either this title or under such special State or local program before any child who does not satisfy such criteria receives such assistance.

Proposed Language For Inclusion in the Legislative History

In 1970 the Title I statute was amended to include the "supplement, not supplant" provision. In general, this provision prohibits local educational agencies from using the receipt of Title I funds by program participants as a basis for discriminating against such children in the provision of regular State and local funds. In other words, children participating in Title I programs must receive their fair share of regular State and local funds. They cannot be penalized in the provision of such State and local funds because they receive assistance under Title I.

In their analysis of the application of the supplement, not supplant provision to the distribution of regular State and local funds, NIE concluded that the provision was necessary and provided sufficient flexibility, however, it concluded that although regulations promulgated by OE prescribe the principles of supplanting, and include some, but not all, of the tests used by OE for determining compliance with the provision, such regulations are not sufficiently comprehensive because some tests are not expressly set forth in the regulations and the regulations are not sufficiently clear because they do not take into consideration the needs of program administrators. Individuals who have been active in Title I for a number of years and who have devoted substantial amounts of time to studying and interpreting the provision have been able to develop a clear understanding of the legal direction that is being provided. However, for those administrators who are new to Title I or have not found the time necessary to study the statute and regulations, the application of principles to day to day situations is not sufficiently clear. This lack of sufficient clarity increases the likelihood that (1) school districts will not comply with the law because they do not understand what is expected of them; and (2) State *and local administrators will pursue overly restrictive policies not prescribed by federal law.*

These findings suggest that OE regulations must take into consideration the needs of the affected audience and must be sufficiently comprehensive. All tests developed by OE pertaining to supplanting must be published in the Federal Register in accordance with Section 431 of the General Education Provisions Act. Furthermore, to avoid the issuance by SEAs of overly restrictive policies, OE regulations must contain legal non-supplanting models and include examples explaining how the general principles apply to day to day situations.

An NIE contractor concluded that a statutory amendment is required to carry out the intent of Congress in the 1974 amendment to Title I that states and school districts be encouraged to establish programs similar to Title I to serve educationally deprived children. The present provision in the statute, proscribing supplanting of state and local funds by Title I funds, uses children "participating" in Title I programs as the frame of reference for considering whether supplanting has occurred. The Office of Education, in an attempt to carry out the intent of Congress to encourage an expansion of programs for educationally deprived children, has used all children eligible for Title I services as the frame of reference for considering whether Title I funds have supplanted special state and local funds that focus on educationally deprived, handicapped or bilingual children. The Office of Education's interpretation avoids the following consequences which would occur, under certain circumstances, if only children actually "participating" in Title I programs were considered in determining whether supplanting has resulted from the distribution of such special state and local funds: (a) special funds, which could have been used to provide compensatory education programs to children eligible for, but not actually "participating" in, Title I must be used for children already receiving Title I services; and (b) inhibiting flexibility in coordinating such special funds and Title I funds, so as to serve all children eligible for Title I. To avoid such consequences, this amendment clarifies that the Office of Education's interpretation is consistent with the intent of Congress.

In sum, the purpose of the supplanting provision with respect to the distribution of regular base state and local funds is to ensure that children participating in Title I programs receive their fair share of such base funds. The purpose of the supplanting provision with respect to special state and local funds is to ensure that educationally deprived children residing in Title I eligible areas qualifying for such special funds receive their fair share. Thus,the effect of this amendment is that the statute will include two distinct sections pertaining to supplanting:the first section is applicable to regular base state and local funds and to state phase-in programs qualifying for an exemption under section 41(a)(2);the second section is applicable to special state and local funds qualifying for an exemption from the comparability and excess costs provisions, irrespective of whether the option provided thereunder is exercised .

The amendment also clarifies the circumstances under which an agency may take into consideration the availability of Title I funds with respect to the distribution of special state or local funds. In general, special state and local funds must be distributed according to state or local law without considering the availability of Title I funds. Then, Title I funds are distributed by the agency according to the federal rules.

The general principle that special State and local funds must be distributed without regard to the availability of Title I funds is subject to an important qualification: the existence of Title I funds can be taken into account in the distribution of special State or local funds if the State or local educational agency employs a plan for distributing such funds which is based on objective criteria formulated in accordance with the principles described below.

The objective criteria requirement ensures that SCE funds will be distributed without discrimination against Title I project areas or children participating in Title I programs, while at the same time permitting comprehensive and coordinated planning by the school district and joint distribution of Title I and SCE funds in cases where no discrimination exists.

To comply with the provisions of the amendment pertaining to the formulation of objective criteria, the applicant agency must:

> (1) formulate objective criteria for determining which children will receive assistance under the special state or local program;
>
> (2) identify the children satisfying the objective criteria and the schools or grade-spans in which such children are enrolled or school attendance areas in which such children reside;
>
> (3) determine what percentage of children of the total number of children in the district who satisfy the objective criteria reside in areas eligible for assistance under this title;
>
> (4) multiply the percentage of children residing in areas eligible for assistance under this title who satisfy the objective criteria by the total amount of state and local funds the local educational agency will provide for the special

state or local program in all school attendance areas.

(5) distribute to educationally deprived children, in the aggregate, residing in areas eligible for assistance under this title, an amount of such special state or local funds which is no less than the amount determined in step 4;

(6) ensure that educationally deprived children residing in areas eligible for assistance under this title, satisfying such objective criteria receive assistance under either this title or under such special state or local program before any child who does not satisfy such criteria receives such assistance;

(7) ensure that all educationally deprived children in greatest need of assistance residing in Title I areas who receive assistance under a special State or local program in lieu of Title I, and who would have received assistance under Title I if such special program did not exist, receive services under such special program that are of the same nature and scope as would otherwise be provided under Title I; and

(8) ensure that educationally deprived children attending private schools will be selected for participation in Title I programs according to general procedures for ranking school attendance areas without regard to exemptions to that procedure allowing children residing in certain areas to receive special State and local funds in lieu of Title I.

Comparability Determinations Where All Areas In A District Are Served

Existing Title I Legal Framework

Section 141(a)(3)(C) of the Title I statute states that

> State and local funds will be used in the district . . . to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title.

Section 116a.26(i)(4) of the existing regulations allows LEAs to divide a single grade span into two groups (one for the larger schools and one for the smaller schools) if "for a particular grade span, one school has an enrollment that is at least two times that of another...". *

Exemptions For Certain LEAs

Schools With 100 or Less Children

The regulations generally provide that a school with an enrollment less than 100 should not be included in the comparability report. provided that

> if the local educational agency operates schools of such size and corresponding grade levels both for areas to be served and areas not to be served under Title I, such agency files with the State educational agency a statement of the policies it will follow concerning the allocations of staff to such schools and the State educational agency finds that such policies are consistent with the objectives of this section. **

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* Schools with enrollments of 100 or less are not to be included in determining the size of the smallest schools. (In addition, schools of less than 100 do not have to be included in comparability reporting. See discussion of comparability exemptions *infra*.).

** 45 C.F.R. §116a.26(k)(1976).

Section 116a.26(o)(1976) has been added to the regulations exempting LEAs that receive at least 95% of their funds for education from federal sources from meeting the comparability requirements.

The regulations* make the comparability provisions not applicable to LEAs

1. which operate only one school serving children at the grade levels at which Title I services are to be provided or
2. which have designated the whole school district at a project area under the no-wide variance provision.**

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* 45 C.F.R. §116a.26(L)(1976).

** The no-wide variance provision is an exception to the general rules for determining school attendance area eligibility. 45 C.F.R. §116a.20(d) provides that "if there is no wide variance in the concentrations of children from low-income families among the several school attendance areas in a school district, the whole of that school district may, at the option of the [LEA] be regarded a project area. An LEA may exercise this option "only if the variation between the areas with the highest and the lowest percentage of such children is not more than one-third of the average percentage of children from low-income families in the district as a whole." (45 C.F.R. §116a.20(d).)

Finding***

The Legal Standards Project identified two problems with the existing comparability regulations; namely the operation of the no-wide variance exemption and the provision pertaining to economies of scale. If an entire school district is "regarded as a project area," there are no "areas in such district which are not receiving funds under" Title I to which project areas can be compared for purposes of determining comparability under Section 141(a)(3)(C). Because of the importance of the comparability provision in ensuring that Title I funds are used to pay for supplementary resources, a new provision applicable to such districts, and implementing the intent of the comparability requirements is needed.

*** These findings are discussed in chapter 10 of a report prepared by the Legal Standards Project entitled An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

A second problem identified by the Project with respect to the comparability regulations concerns the existence of the so-called "economies of scale" provision. This provision was designed to add flexibility by recognizing the alleged effects of size on the distribution of services. We have concluded that the purpose of including such a provision may be meritorious (one empirical study analyzing this question raised serious question as to its applicability for explaining unequal distributions of services); however, the current provision is arbitrary and capricious allowing LEAs to defeat the very purpose of the comparability provision. Under the existing regulations, an LEA is permitted to divide schools within a particular grade span into two size groups if student enrollment in any school is twice as great as the enrollment in another school. Once it can be shown that one school has twice the enrollment of a second school it may divide the grade span group at any point on the continuum. Thus, the current provision would allow the following result, notwithstanding the fact that its purpose is to enable LEAs to compare schools of similar size, not to avoid demonstrating comparability.

Title I Schools	Non-Title I Schools
800	799
800	799
800	400

In accordance with the regulations the LEA could choose 799 as the cut-off point between "large" and "small" schools. As a result, this school district would be exempted from demonstrating comparability since there are no non-Title I schools with 800 children or more which may be compared with the Title I schools, all of which have 800 children.

If economies of scale is deemed to be a legitimate factor, the legislative history should indicate that OE consider alternative policies, for example, the use of a weighting factor so that the LEA will still be required to demonstrate comparability even if there are no non-Title I schools in the same size category as the Title I schools.

Amendment to Tentative Draft

(Relating to comparability determinations where all areas in a school district are served)

Amend section 36(e) by inserting the following new sentence after the first sentence thereof.

Where, under regulations of the Commissioner, all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are comparable in each project area.

Proposed Language for Inclusion in the Legislative History

This amendment ensures that services provided with State and local funds will be comparable in all areas of a district where each area in the district has been properly designated, under regulations promulgated by the Commissioner, a Title I project area.

The amendment reflects the intent of Congress that comparability be determined and maintained in all circumstances except with respect to State and local funds specifically exempted by statute and except as provided in the next sentence. Certain exemptions provided for in existing regulations published in the Federal Register (41 FR 42894 et seq., September 28, 1976) shall continue in effect. The applicable regulations provide that local educational agencies that receive ninety-five percent of their funds for education from federal sources and those which operate only one school serving children at the grade levels at which Title I services are to be provided are to be exempted from the comparability requirement. Furthermore, schools with an enrollment less than 100 should not be included in the comparability report provided that if the local educational agency operates schools in project and non-project areas, such agency files a statement with the state educational agency which sets forth the policies it will follow concerning the equitable allocation of instructional resources.

Since services must be comparable, differential costs involved in providing the same services to different size schools or schools in remote rather than near locations, etc., may be taken into consideration in determining comparability. A *weighting system might be employed, for example; however, it is important that adjustments of this kind be limited in their effect to the purposes for which they are valid. Thus, methods of taking into consideration differential costs must not have the effect of exempting any school from compliance with the comparability requirement.*

Existing Title I Legal Framework

The comparability requirement is intended to ensure that services provided with state and local funds to educationally deprived children attending schools in project areas are comparable, i.e., approximately equal to services provided to children attending non-project area schools, before the addition of Title I funds for project area schools. In other words, this requirement ensures that Title I funds will be used to provide additional services to project area schools.

The general purpose of the comparability provisions in relationship to the basic premise of the entire Title I legislation was expressed on the House floor by Congressman Quie of Minnesota (Volume 116, Part 8, 91st Congress, 2nd Session, at p. 10013):

> ...the whole purpose of Title I is to concentrate and increase efforts on behalf of disadvantaged children because these children need more help than their more fortunate peers. Unless comparable services are provided before the application of Title 1 funds in schools serving concentrations of poor children this purpose is defeated...

The requirement, as set forth in Title I legislation, provides that:

> State and local funds will be used in the district[of the LEA] to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title.* (emphasis added).

In general, the comparability regulations provide that the SEA must not approve a LEA Title I application or make payments of Title I funds under a previously approved application

> unless that local educational agency has demonstrated, in accordance with paragraph (e) of this section, that services provided with State and local funds...in Title I project areas are at least comparable to the services being provided with such State and local funds in schools serving attendance areas not designated as Title I project areas.**

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* Section 141(a)(3)(C) of Title I (20 U.S.C. 241e(a)(3)(C)).

** C.F.R. §116a.26(a)(1976).

Paragraph (e) of §116a.26 of Title 45 of the Code of Federal Regulations generally states that services being provided by the LEA with State and local funds in a project area will be comparable to the services being provided with State and local funds in nonproject areas if each Title I school has ratios of children to instructional staff * and expenditures per child** that are, at least, nearly equal to those ratios for the average of the schools not receiving Title I funds. The regulations

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* Under the revised regulations "instructional staff members" means

> members who render direct and personal services which are in the nature of teaching or the improvement of the teaching-learning situation. The term includes teachers, principals, consultants, or supervisors of instruction, librarians, and guidance and psychological personnel it also includes aides or other paraprofessional personnel including clerical personnel employed to assist such instructional staff members in providing such services.

45 C.F.R. §116a.26(b)(1976). The comments to the revised regulations indicate that this broad definition of instructional staff members is required both to implement Congressional intent and because "principals, librarians and special instructional personnel do affect the quality of instructional services..." Comment 8 to §116a.26, 41 FR 42902 (September 28, 1976).

** The revised regulations (45 C.F.R. §116a.26(b)(1)(1976)) specify the methodology to be used for counting the "number of children enrolled" for purposes of determining compliance with the comparability ratios. LEAs are instructed to

1. count children enrolled in less than full-day kindergarten programs on a full-time equivalency basis.

2. take into account state or local educational finance plans that include weighting factors for children in certain educational categories, age groupings or grade levels when determining the number of children

specify that services will be considered comparable in Title I schools if:

> (a) the number of children enrolled per instructional staff member...for each public school serving a Title I project areas is not more than 105 percent of the average number of children per instructional staff member in all other public schools in the applicant's district; *
> and (b) the annual expenditure per child [for instructional staff, exclusive of longevity], in each public school serving a Title I project area is not less than 95 percen of such expenditure per child in all other public schools in the applicant's district. **

(footnote continued from previous page)

> enrolled for purposes of comparability reporting. This adjustment may only take place "with the approval of the [SEA]."

The comments indicate that such weightings may be taken into account provided they are reasonable and uniformly applied. Comment 11 to §116a.26, 41 FR 42902 (September 28, 1976).

* 45 C.F.R. §116a.26(e)(1)(1976).

** 45 C.F.R. §116a.26(e)(2)(1976). Section 116.26(b)(1974) of the old regulations required that the comparability report submitted by the LEAs to the SEA contain the total portion of salaries for instructional staff members based on length of service (longevity), however, longevity was not included for purposes of computing the ratio of expenditures per pupil for instructional salaries. The revised regulations do not require the reporting of longevity data.

Paragraph (e) of §116a.26 of Title 45 of the Code of Federal Regulations generally states that services being provided by the LEA with State and local funds in a project area will be comparable to the services being provided with State and local funds in nonproject areas if each Title I school has ratios of children to instructional staff * and expenditures per child** that are, at least, nearly equal to those ratios for the average of the schools not receiving Title I funds. The regulations

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Section 116.26(c)(3)(1974) of the old regulations provided that any LEA which was non-comparable in either of the two ratios described *supra* must demonstrate that the expenditure per child for textbooks, library resources, and other instructional materials and supplies in each public school serving a project area is not less than 95 percent of such expenditure per child in all other public schools in the district.

The above provision has been *deleted* from the revised regulations. The revised regulations now require that LEAs annually file with the SEA

> A *statement of the specific policies and procedures* adopted by the [LEA] to assure that textbooks, library resources, and other instructional materials and supplies are provided for each school serving a Title I project area on a basis that is comparable to that for non-project areas. * (emphasis added)

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* 45 C.F.R. §116a.26(h)(3)(1976).

Findings*

In several states included in a survey conducted by a NIE contractor, it was suggested that alternative criteria for determining comparability should be permitted if such alternative criteria ensure comparability of services to the same extent as the existing criteria.

For example, one state, which has passed state-wide school finance reform legislation, ostensibly requiring equal expenditures to the child level, explained that requiring compliance with both ratio 1 and 2 "precludes the implementation of several important practices of school administration and program innovation."

In addition to issues raised by SEAs, an NIE contractor raised a question concerning the adequacy of the existing criteria. The NIE contractor concluded that the use of the non-Title I average as the standard of comparison for demonstrating comparability permits substantial inequities. The first inequity results from the possible wide variations in the schools constituting the non- Title I average.

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* These findings are discussed in chapter 10 of a report prepared by the Legal Standards Project entitled, An Analysis of the Basis For and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of the ESEA. This report was prepared under contract with the National Institute of Education.

The second inequity concerns the inclusion of Title I eligible but non targeted area schools in the non-project area average. The following example is illustrative--

Title I Project Area Schools		Non-Project Area Schools	
A	C	E	G
$500	$500	$200	$600
B	D	F	H
$500	$500	$600	$600

In this hypothetical school district there are four project area schools and four non-project area schools, all having a student enrollment of 800. School E is a Title I eligible school, i.e., a school having high concentrations of low-income families not receiving assistance because of limited Title I funds. The non-Title I average for instructional salaries per pupil is $500 ([600 + 600 + 600 + 200] ÷ 4 = 500). Even without reference to the 5 percent leeway allowed under the Title I regulations, it is apparent that comparability has been attained in this school district.

However, what is not readily apparent is that three out of the four non-project area schools will each have an additional $80,000 ($100 x 800) to spend on services which will not be available to any of the project area schools. The sole non-project area school that receives significantly less services than other schools in the district is a school that is eligible for but not served by Title I.

The Project has drafted proposed statutory language which would provide OE with authority to conduct an empirical study of these allegations.

Amendment to Tentative Draft

(Relating to STudy of Alternatives for Demonstrating Comparability)

Amend the Tentative Draft by renumbering section 137 as 138, and by inserting after section 136 the following new section:

"Study of Alternatives for Demonstrating Comparability.

"Sec. 154. (a) Purpose of Study -- The Commissioner shall, during the period ending September 30, 1980, make a study of the feasibility and desirability of alternative criteria for demonstrating the comparability of services provided with State and local funds in each project area to those provided outside such areas which ensure, at least to the same extent as the criteria in existing regulations published in the Federal Register, (41 F.R. 42894 et seq., September 28, 1976) that children in each school serving a project area receive comparable services paid for out of State and local funds.

"(b) Areas to be Studied and Waiver Authority for Such Areas -- The Commissioner may select all the local educational agencies in one State and not more than twenty such agencies in other States which are reasonably representative of the various geographical areas of the Nation for participation in the study provided for in this section. For purposes of the study, the Commissioner, without regard to section 431 of the General Education Provisions Act, may permit the use of substitute criteria meeting the requirements of subsection (c) in place of criteria contained in existing regulations, to be applicable only for the school years 1978-1979 and 1979-1980 and only to local educational agencies selected to participate in the study.

"(c) Selection of Alternative Criteria -- Local educational agencies selected for participation in the study provided for in this section shall demonstrate comparability through the use of alternative criteria, which, at a minimum, meet the conditions of paragraphs (1) through (6) --

"(1) Such criteria are approved by the district-wide advisory council established under section 35;

"(2) Based on such criteria each school serving a project area receives services comparable to those services provided with State and local funds in schools not receiving assistance under this title;

"(3) Services measured by such criteria shall vary by not more than 5 percent between each school serving a project area and other schools of the agency;

"(4) Compliance with such criteria shall be determined on the basis of services actually provided during the current school year;

"(5) If expenditures are used in the criteria, only expenditures for instructional services shall be included and for this purpose 'instructional services' means current expenditures for free public education other than expenditures for attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities;

"(6) In all other respects, such criteria shall be consistent with the regulations of the Commissioner pertaining to comparability of services.

"(d) Continuation of Reporting Under Existing Criteria -- In order to provide a basis for comparison, local educational agencies participating in the study under this section shall continue to make reports under existing criteria for comparability of services.

Language For Inclusion In The Legislative History

Several State and local school officials contend that school districts should be permitted to demonstrate comparability of services by using criteria other than that presently prescribed by the Commissioner where such alternative criteria ensure comparability of services to the same extent as the existing criteria. The amendment authorizes the Commissioner to waive existing criteria for a limited number of school districts for the purpose of analyzing the feasibility and desirability of modifying existing criteria. The study will, among other things, analyse the extent to which a school district which is able to comply with the alternative criteria does not comply with existing criteria and whether the use of alternative criteria results in increased problems in the effective oversight of the comparability provisions by the State educational agency and the federal government.

The committee recognizes that some school districts are of the opinion that the existing criteria inhibit the development of innovative staffing patterns and thus it is expected that many of the alternatives will address this issue. It has also been asserted by an NIE contractor at p. 589 of a paper entitled, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of ESEA" that the use of the non-Title I average as the standard of comparison for purposes of demonstrating comparability permits significant inequities with respect to the provision of services paid for with State and local funds to Title I project area schools. These potential inequalities result from the wide variations in the schools constituting the non-Title I average. It is expected that a fair percentage of the alternatives will address this alleged inequity. Alternatives to the use of the non-Title I average which might be selected by a local educational agency include the use of the most favored non-project area school and a requirement that the standard deviation for the non-project area average or some other measure of variance does not exceed a certain tolerance.

Since the purpose of this alternative is to study the development of alternative criteria which provide greater flexibility without compromising the purpose of the comparability provision, school districts must, among other things, continue to ensure that each Title I school be compared with a standard reflecting services provided in schools not receiving Title I funds, that only expenditures for instructional services be included, the school district continues to report comparability as of a given point in time, i.e., the mere existence of a formula for distributing funds will not qualify as an acceptable alternative to the existing criteria, that the local educational agency files with the State educational agency a statement of the specific policies for ensuring that instructional materials and supplies are provided on a comparable basis, and all other provisions in the existing regulations published in the Federal Register (41 FR 42894 et seq., September 28, 1976), including the provisions specifying the dates for reporting comparability, that comparability must be maintained, and the enforcement provisions are still applicable.

Recordkeeping Requirement and Exemption From Such Requirement Where State and Local Compensatory EducationPrograms Are Identical to Title I

Existing Title I Legal Framework

The Title I and GEPA legislation provide , in relevant part, that each LEA must (1) retain records and afford access to such records as the SEA "may find necessary to assure the correctness and verification"* of LEA reports; (2) retain such records "as the Assistant Secretary [of Education] may prescribe;** (3) afford access to such records "for the purpose of audit examination"*** and (4) make available to parents and other members of the general public the Title I application, all pertinent documents relating to the application, and all evaluations and reports prepared by the LEA which are submitted to the SEA.****

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* Section 141(a)(7) of Title I (20 U.S.C. 241e(a)(7)).

** Section 434(a)(1) of GEPA (20 U.S.C. 1232c(a)(1)). Such records must include records "which fully disclose the amount and disposition by [the LEA]. . . of the proceeds of [Title I]. . . the total cost of the project or undertaking in connection with which such funds are given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit." Id.

*** Section 434(a)(2) of GEPA (20 U.S.C. 1232c(a)(2)). See 45 C.F.R. §100b.477(1976) of the GEPA regulations governing record retention.

**** Section 141(a)(8) of Title I (20 U.S.C. 241e(a)(8)).

Finding[*]

Under existing law, an LEA is required to, among other things, differentiate between Title I and state compensatory education funds. An NIE contractor concluded that it is not necessary to trace or be able to differentiate between Title I and state or local compensatory funds where a local educational agency uses Title I and special state or local funds to design and implement a single compensatory education program which satisfies all the Title I requirements. To the extent HEW auditors find that compensatory education funds have been misexpended, the federal government can seek repayment in proportion to its contribution.

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[*] These findings are discussed in chapter 10 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

Amendment To Tentative Draft

(Relating to recordkeeping for dual-funded programs)

Amend section 36(b) to read as follows:

" (a) Recordkeeping--Each local educational agency which receives funds under this title shall keep such records and afford such access thereto as the State educational agency shall prescribe, including records which fully disclose the amount and disposition of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of the portion of the cost of the program or project supplied by other sources, and such other records as will facilitate an effective audit. Where a local educational agency carries on a single compensatory education program paid for out of funds under this title as well as State or local funds which meets all of the requirements of this title, the State educational agency shall not require the Federal funds to be accounted for separately. In any proceeding, State or Federal, for the recoupment of any such funds which were misspent or misapplied, the percentage of the funds so misspent or misapplied which shall be deemed to be Federal funds shall be equal to the percentage of the funds used, or intended for use, for the program or project which were Federal funds.

Proposed Language For Inclusion in the Legislative History

This amendment provides that a local educational agency which uses Title I and State and local compensatory education funds to design and implement a single compensatory education program which satisfies all Title I requirements, need not separately account for the Federal, State and local funds. Should *expenditures of combined funds ever be found to violate Title I legal requirements, the Commissioner should seek to recover the proportionate federal share of the misspent funds.*

LEA Complaint Resolution Procedures

Existing Title I Legal Framework

Under previous Title I regulations, LEAs were required to develop complaint resolution procedures. 45 C.F.R. §116.17(o)(2)(vii)(1974). Regulations proposed in March, 1975, would have retained this requirement. §116a.25(g)(6) 40 Fed. Reg. 11485 (March 11, 1975). The current regulations (issued September 28, 1976), however, deleted the requirement. The deletion was accompanied by the comment, "relevant complaint procedures are now included in Sec. 116.6."

45 C.F.R. §116.6 of the regulations includes no express requirement that LEAs develop and implement complaint resolution procedures; this section mentions only SEA complaint resolution procedures.

Finding*

It is inappropriate to require that all complaints be heard initially at the state level; in fact, most complaints should be aired first at the local level. A comprehensive interlocking system of complaint resolution explicitly describing complaint resolution responsibilities at all three levels of the Title I structure -- LEA, SEA, and OE should be devised. This system should be accessible, widely publicized, prompt, and open to public scrutiny and should afford the opportunity to the complainant to initiate a complaint at any level, to present evidence, to have the

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These findings are discussed in chapter 9 of a report prepared by the Legal Standards Project entitled, *An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965.* This report was prepared under contract with the National Institute of Education.

complaint independently investigated, to receive notice of the resolution of the complaint, and to appeal the resolution of a complaint either to the SEA or OE level or to both successively.

RECOMMENDED STATUTORY AMENDMENT

Amendment To Tentative Draft

(Requiring local educational agencies to adopt complaint resolution procedures)

After section 36, insert the following new section:

"Complaint Resolution

"Sec. 38. Each local educational agency which receives funds under this title shall develop and implement written procedures for the resolution of complaints concerning violations of this title, or of applicable provisions of the General Education Provisions Act in connection with programs under this title, which are made to that agency by parent advisory councils, parents, teachers, or other concerned organizations or individuals. Such procedures shall--

"(1) include the dissemination to organizations and individuals interested in programs assisted under this title, of the name, title, address, and telephone number of any local official responsible for investigating and resolving complaints;

"(2) provide specific time limits for investigation and resolution of complaints, which shall not exceed thirty days;

"(3) provide an opportunity for the complainant or the complainant's representative, or both, to present evidence, including an opportunity to question parties involved;

"(4) provide for keeping all correspondence or other

written communications concerning the complaint in a central file, accessible to all parties;

"(5) include a requirement that the complainant, the complainant's representative, the district parent advisory council and appropriate school parent advisory councils be notified in writing by the local educational agency, within ten days after the resolution of the complaint, of the nature of the resolution and the reasons for such resolution;

"(6) provide the right to appeal the final resolution of the local educational agency to the State educational agency within thirty days after receipt of the written decision;

"(7) provide for the dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school parent advisory councils; and

"(8) provide that exhaustion of the local educational agency complaint procedure is not a prerequisite to filing a complaint with the State educational agency or the Commissioner.

Proposed Language for Inclusion in the Legislative History

This amendment clarifies the responsibility of local educational agencies to resolve complaints about Title I.

Because Title I is a program intended as a direct benefit to educationally deprived children, it is most appropriate that procedures be established whereby these beneficiaries may require the trustees of the funds to account for their actions. Since the beneficiaries are children, it is appropriate that the necessary procedures provide access to parents, parent councils, and others concerned with the proper protection of children's legal rights.

The complaint resolution procedures required by this amendment are intended to provide thorough inquiry into, and prompt and definite resolution of, each complaint that is made on behalf of children eligible to participate in Title I programs.

Participation of Children Attending Private Schools

Existing Legal Framework

Title I is the first Federal aid-to-education program authorizing assistance for private school children as well as for children attending public schools. The Title I legislation recognizes that all educationally deprived children residing in areas having high concentration of children from low-income areas* do not necessarily attend the public schools and that since the legislative aim was to provide assistance to educationally deprived children** rather than to specific schools, it was thought to be necessary to include eligible private school children among the beneficiaries of the Act.

Under the administrative structure established by Title I, the primary responsibility for designing and effectuating Title I programs and projects for educationally deprived children attending private schools rests with the LEA.*** It is the LEA which must make provision for including special educational services and arrangements in which such children may participate.

The State, through its SEA, may not approve an application by an LEA unless the LEA provides a satisfactory assurance that it will comply with Section 141A of the Act pertaining to the participation of children enrolled in private schools.**** Prior to the Education Amendments of 1974, the Title I statute provided that no LEA was to receive its Title I grant unless it provided for the participation of eligible children attending private schools. Since this requirement proved difficult to enforce,[*] Congress adopted a so-called "by-pass" provision.

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* Section 141(a)(1) of Title I, (20 U.S.C. 241e(a)(1)) and Section 141A of Title I, (20 U.S.C. 241e-1).

** See generally Section 101 of Title I, (20 U.S.C. 241a).

*** Section 141(a) of Title I (20 U.S.C. 241e-1(a)).

**** Section 141(a)(2) of Title I, (20 U.S.C. 241e(a)(2)).

In accordance with 1974 amendments to Title I,[**] the Commissioner is required to by-pass any LEA and personally make arrangements for the provision of services to those educationally deprived children enrolled in private schools (a) upon his determination that the LEA "has substantially failed" to involve such children in its Title I programs "on a equitable basis" with eligible children attending the private schools or (b) when a LEA is prohibited by law from providing for the participation of such children in special programs. In circumstances under which the by-pass provision is utilized, the Commissioner must design Title I programs which satisfy the requirements contained in Section 141A(a) of Title I (20 U.S.C. 241e-1(a), which are described supra. Separate programs provided by the Commissioner will be paid for out of the LEA's allocation.[***]

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[*] House Report No. 93-805 at 3 U.S. Code Cong. and Adm. News 4109 (1974).

[**] Section 141A(b) of Title I,(20 U.S.C. 241e-1(b), as added by section 101(a)(6) of the Education Amendments of 1974 (P.L. 93-380).

[***] Section 141A(b)(3) of Title I (20 U.S.C. 241e-1(b)(3).

Findings[*]

NIE's research has confirmed the widely held impression that current arrangements for providing Title I services to eligible private school students are not adequate. NIE's research indicates that public school districts frequently fail to inform nonpublic schools of the availability of Title I services. Where services are provided, private school personnel are often not involved in the needs assessment and program development process, so that the programs may not be designed to meet private school pupils' specific needs.

In addition, implementation of the "by-pass" provision written into the Statute in 1974 has proven cumbersome. The Office of Education has not defined general standards for judging equitable involvement of nonpublic school children in Title I. Investigations of complaints that services are not being provided are time-consuming and costly. These investigations must be conducted after the school year begins; the lengthy process before the by-pass provision can be invoked often means that services can be delivered to private school students (under a by-pass arrangement) only for a small portion of the school year.

Improvements could be made if the Office of Education developed regulations to ensure adequate publicity about the availability of services to nonpublic students and created more workable by-pass procedures.

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[*] These findings are derived from a report prepared for NIE entitled, Summary Report: Delivery of Title I Services to Nonpublic School Students, by Thomas W. Vitullo-Martin, Council of American Private Education, Oct. 10, 1977 and from conversation of NIE staff with the Office of Education.

Proposed Committee Report Language

Title I funds have always been intended to reach eligible pupils in nonpublic as well as public schools. NIE's research on Title I indicates, however, that children in nonpublic schools may not be adequately served by Title I programs. NIE reports suggest that nonpublic schools may not be informed of the availability of Title I services and that public school officials often do not design programs to meet the specific needs of private school children. The committee wishes to emphasize that LEA's should publicize which attendance areas are eligible for Title I and the availability of services to eligible non-public school students in these areas. Where appropriate, efforts should be made to include private school personnel in the Title I needs assessment and program planning process. These goals can best be accomplished by the strengthening of OE regulations ensuring that adequate information is made available about private school children's eligibility for Title I services.

NIE's research also indicates that the "by-pass" provision has not been efficiently implemented. The Committee wishes to urge the Commissioner to develop more workable by-pass procedures.

Clarification Of Present Exemption From Comparability For Certain Special State and Local Programs

Existing Title I Legal Framework

Prior to 1974, LEAs were required to include both SCE and bilingual funds in their comparability calculations. The 1974 Education Amendments changed this.* In a provision stating that Title I funds may pay only for the "excess costs" of programs and projects, Congress indicated that at the LEA's option the definition of "excess costs" need not include expenditures for

> any comparable State or local special programs, for educationally deprived children or expenditures for bilingual programs or special education for handicapped children or children with specific learning disabilities, if such expenditures for bilingual education and special education are used to provide, to children of limited English-speaking ability and handicapped children, and children with specific learning disabilities who reside in title I project areas, services which are comparable to those provided to similarly disadvantaged children residing in non-project areas.**

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* P.L. 93-380.

** §403(17) of P.L. 81-874, as amended by the 1974 and 1976 Education Amendments.

Section 116a.26(j)(5)(1976) of the revised regulations implements the statutory change with respect to SCE programs by allowing LEAs, at their option, to exclude state and/or local compensatory education funds from their comparability determinations if such funds support a program that meets the following four criteria

- participants are "educationally deprived children" as defined under Title I;
- the program is based on performance objectives related to educational achievement and provides supplementary services designed to meet the special educational needs of those particular children;
- the program is evaluated in a manner consistent with those program objectives and
- for purposes of determining compliance with the above criteria, the LEA is separately accountable to the SEA for any State or local funds expended for such program.

With respect to expenditures under bilingual and handicapped programs, the regulations allow LEAs, at their option to exclude these funds as well as SCE funds.* However, in accordance with the language of the statute, LEAs excluding expenditures under bilingual and handicapped programs must submit "mini-comparability reports" demonstrating that services provided with funds under these special programs in non-project areas are comparable to those services provided in project area schools.*

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* 45 C.F.R. §116a.26(j)(1) and (2)(1976). The regulations devise separate methodologies for excluding appropriate funding (a) where eligible children are enrolled full-time in special education classes and (b) where such children are not enrolled full-time. Where eligible children are enrolled full-time in special education classes, LEAs may exclude: "all those children, the teachers and other instructional

LEAs taking advantage of the option to exclude SCE, bilingual and handicapped program funds are required by the regulations to maintain by individual schools "appropriate records documenting the exclusions." **

Section 116a.26(b)(6)(1976) of the regulations requires that the comparability report submitted by the LEAs include "the number of children and of members of instructional staff and expenditures for such staff, if any, that were excluded from [comparability] determinations."

(footnote continued from previous page)

staff members who serve them and instructional expenditures for such staff...". 45 C.F.R. §116a.26(j)(1)(1976). Where eligible children are not enrolled full-time in special education classes, the LEA may exclude expenditures for bilingual and special education programs and may also exclude "the staff employed with state and local funds. If expenditures for staff and numbers of staff are excluded in accordance with the preceding sentence, then the full-time equivalent number of children served under such programs may also be excluded." 45 C.F.R. §116a.26(j)(2)(1976).

* 45 C.F.R.§116a.26(j)(3)(1976).

** 45 C.F.R. §116a.26(m)(iii)(1976).

Finding*

The current statutory authority allowing an LEA, at its discretion, to exclude, from Title I comparability computations, expenditures made under certain special State or local programs is the proviso included in the definition of the term "excess costs." This provision does not include an express reference to the relationship between excess costs and comparability.

Although this relationship is clarified in the legislative history, several SEAs indicated that they did not understand how the excess costs proviso granted them discretion to exclude expenditures under special programs from Title I comparability computations. The Legal Standards Project has drafted a statutory amendment which would clarify these interrelationships. Further, the proposal would codify the conditions presently contained in the regulations which a State or local program would have to satisfy to qualify for an exemption.

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* These findings are discussed in chapter 7 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

Amendment To Tentative Draft

(Relating to exclusions from the "excess cost" and comparability requirement" and advance determinations of eligibility thereof)

Amend section 35(b) by striking-out the second sentence thereof.

Insert the following section after section 39, and renumber the sections which follow (and cross-references thereto) accordingly:

"Exclusions From Excess Costs and Comparability Provisions

"Sec. 40. (a) In General--For the purpose of determining compliance with the requirement of section 36(b) (permitting funds to be used only for excess costs of programs and projects) and of section 36(e) (relating to comparability of services between each project area school and non-project area schools), a local educational agency may, at its option, exclude State and local funds expended for carrying out a program or project which meets the requirements of subsections (b) or (c).

"(b) State and Local Compensatory Education Programs Similar to Title I Programs--A State or local program meets the requirements of this subsection if it is similar to programs assisted under this sub-part. The Commissioner shall consider a State or local program to be similar to programs assisted under this sub-part if--

"(1) all children participating in the program are educationally deprived,

"(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

"(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

"(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3) and (4) of this subsection are met.

"(c) Bilingual Programs or Special Education Programs for Handicapped Children or Children With Specific Learning Disabilities--A bilingual program for children of limited English-speaking ability or a special education program for handicapped children or children with specific learning disabilities meets the requirements of this subsection if such program provides services to children residing in project areas which are comparable to those provided similarly disadvantaged children residing in non-project areas.

Language For Inclusion in the Legislative History

This amendment clarifies the discretionary authority granted to local educational agencies with respect to the exclusion of expenditures under certain special state or local programs satisfying specified criteria from both the excess costs and comparability provisions.

Exemption From Comparability For Certain State Phase-In Programs

Existing Title I Legal Framework

Prior to 1974, LEAs were required to include both SCE and bilingual funds in their comparability calculations. The 1974 Education Amendments changed this.* In a provision stating that Title I funds may pay only for the "excess costs" of programs and projects, Congress indicated that at the LEA's option the definition of "excess costs" need not include expenditures for

> any comparable State or local special programs, for educationally deprived children or expenditures for bilingual programs or special education for handicapped children or children with specific learning disabilities, if such expenditures for bilingual education and special education are used to provide, to children of limited English-speaking ability and handicapped children, and children with specific learning disabilities who reside in title I project areas, services which are comparable to those provided to similarly disadvantaged children residing in non-project areas.**

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* P.L. 93-380.

** §403(17) of P.L. 81-874, as amended by the 1974 and 1976 Education Amendments.

Findings*

Under the present legal framework, exemptions from the comparability provision are granted for (a) state and local compensatory education programs, (b) bilingual programs, and (c) special education programs. There is no exemption for a phase-in program, like California's Early Childhood Education Program (now referred to as the School Improvement Program) which generally aids the entire school by facilitating restructuring of the school. Such programs face the same types of problems encountered by SCE programs prior to the 1974 Education Amendments.** Before Congress grants an exemption for programs like

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* These findings are discussed in chapter 7 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

** Id.

ECE, close scrutiny should be applied because such programs share an important characteristic with general aid funds -- all children can benefit from them. Before granting a new exemption for underfunded programs of this kind, Congress should require proponents of an exemption to bear the burden of demonstrating why they are not simply disguised, unequally distributed general aid. If the program is to fund a general "reform" of education practices, proponents should explain why reforms can only be accomplished by special new funds rather than by simply reorienting the use of regular funds. Proponents should offer evidence indicating that the reforms are as beneficial to educationally deprived children as other children and whether the reforms tend to exacerbate the achievement differences between them.

In addition, proponents should assume the burden of drafting an exemption for such reforms which benefit all children without opening a loophole in comparability for poorly designed State or local compensatory education programs which otherwise fail to satisfy the requirements for an exemption from comparability for state and local programs similar to Title I.

Finally, Congress should not adopt an amendment unless it is satisfied that specific conditions can be adopted which clearly define the State phase-in programs that qualify for an exemption and those that do not.

After considering these and other questions, such as the length of time the program will be underfunded and the percentage of the educationally deprived children eligible for the program that will actually participate during the period of underfunding, Congress should only legislate new exemptions that are tailored to fit closely the demonstrated need. Otherwise an unintended loophole is likely to be created. On the basis of available evidence, neither NIE nor the contractor has concluded that a porgram like California's Early Childhood Education Program should be granted an exemption from comparability. Should Congress, however, wish to expand the existing comparability exemption to accommodate the ECE philosophy, an exemption for such programs should be written in such a way as to avoid permitting general aid programs to be included. The following exemption is intended to apply specifically to ECE-like programs.

Amendment To Tentative Draft

(Relating to exclusions from the "excess cost" and comparability requirement" and advance determinations of eligibility thereof)

Amend section 35(b) by striking-out the second sentence thereof.

Insert the following section after section , and renumber the sections which follow (and cross-references thereto) accordingly:

"Exclusions From Excess Costs and Comparability Provisions

"Sec. 40. (a) In General--For the purpose of determining compliance with the requirement of section 36(b) (permitting funds to be used only for excess costs of programs and projects) and of section 36(e) (relating to comparability of services between each project area school and non-project area schools), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program which meets the requirements of subsection (b) or (c), or a State phase-in program which meets the requirements of subsection (d).

"(b) State and Local Compensatory Education Programs Similar to Title I Programs--A State or local program meets the requirements of this subsection if it is similar to programs assisted under this sub-part. The Commissioner shall consider a State or local program to be similar to programs assisted under this sub-part if--

"(1) all children participating in the program are educationally deprived,

"(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

"(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2) and (3) of this subsection, and

"(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3) and (4) of this subsection are met.

"(c) Bilingual Programs or Special Education Programs for Handicapped Children or Children With Specific Learning Disabilities-- A bilingual program for children of limited English-speaking ability or a special education program for handicapped children or children with specific learning disabilities meets the requirements of this subsection if such program provides services to children residing in project areas which are comparable to those provided similarly disadvantaged children residing in non-project areas.

"(d) Certain State Phase-In Programs -- A State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that --

"(1) the program is authorized and governed specifically by the provisions of State law;

"(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

"(3) the program is based on objectives, including but not limited to performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

"(4) parents and school staff are involved in comprehensive planning, implementation and evaluation of the program;

"(5) the program will benefit all children in a particular school or grade-span within a school;

"(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

"(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to _______________, 1977 shall extend to the beginning of the 1980-1981 school year,

"(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest numbers or concentrations of educationally deprived children or children from low-income families,

"(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program,

"(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8) and (9) of this subsection, to the State educational agency for any funds expended for such program,

"(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8) and (9) and the State educational agency is complying with paragraph (10).

Proposed Language For Inclusion In The Legislative History

This amendment provides an exemption from the comparability and excess costs provision for State programs which are being phased into full operation by a date certain. The exemption is identical to that presently provided for certain special State and local programs, e.g., State and local compensatory education programs. The amendment specifies ten conditions which must be complied with in order for the Commissioner to certify the program's eligibility for the exemption.

Certification By The Commissioner And State Educational Agency Concerning Whether Certain Special State Or Local Programs Qualify For An Exemption From The Excess Costs And Comparability Provisions

Existing Title I Legal Framework

Prior to 1974, LEAs were required to include both SCE and bilingual funds in their comparability calculations. The 1974 Education Amendments changed this.* In a provision stating that Title I funds may pay only for the "excess costs" of programs and projects, Congress indicated that at the LEA's option the definition of "excess costs" need not include expenditures for

> any comparable State or local special programs, for educationally deprived children or expenditures for bilingual programs or special education for handicapped children or children with specific learning disabilities, if such expenditures for bilingual education and special education are used to provide, to children of limited English-speaking ability and handicapped children, and children with specific learning disabilities who reside in title I project areas, services which are comparable to those provided to similarly disadvantaged children residing in non-project areas.**

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* P.L. 93-380.

** §403(17) of P.L. 81-874, as amended by the 1974 and 1976 Education Amendments.

Finding*

Improper use of the SCE comparability exemption entails potentially serious consequences. If funds are found to have been improperly excluded from comparability computations because the LEA fails to satisfy the criteria set forth in the regulations, the comparability ratios must be recomputed. If the recomputation indicates a comparability violation, the LEA must be deemed to have been out of compliance since the inception of the program. Currently, the consequence of non-compliance is total ineligibility for Title I funding. Because these consequences are serious, it is important that determinations concerning the comparability exemption, to the extent possible, be made prior to the expenditure of Title I funds. The Legal Standards Project has drafted a statutory amendment which would require pre-certification of programs.**

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* These findings are discussed in chapter 7 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

** This draft is based on the assumption that Congress will expand the number of programs qualifying for an exemption to include certain phase-in programs. The applicable conditions which a phase-in program would be required to satisfy are described supra.

Amendment To Tentative Draft

(Relating to exclusions from the "excess cost" and "comparability requirement" and advance determinations of eligibility thereof.)

Amend section 35(b) by striking-out the third sentence thereof.

Insert the following after the end of subpart 3 of part A:

"Exclusions From Excess Costs and Comparability Provisions for Certain Special State and Local Programs

"Sec. 41. (a) In General--For the purpose of determining compliance with the requirement of section 36(b) (permitting funds to be used only for excess costs of programs and projects) and of section 36(e) (relating to comparability of services between each project area school and non-project area schools), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program or a State phase-in program. For purposes of this section--

(1) a special program is limited to--

"(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (b) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (b);

"(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (b), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (b), provided that the local educational agency

designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (b) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (b);

"(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (b) and which the State educational agency determines is being implemented in accordance with subsection (b); or

"(D) a bilingual program or special education program which meets the requirements of subsection (c);

(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

"(b) State and Local Compensatory Education Programs Similar to Title I Programs--A State or local program meets the requirements of this subsection if it is similar to programs assisted under this subpart. The Commissioner shall consider a State or local program to be similar to programs assisted under this subpart if--

"(1) all children participating in the program are educationally deprived,

"(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

"(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection,

"(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3) and (4) of this subsection are met.

"(c) Bilingual Programs or Special Education Programs for Handicapped Children or Children With Specific Learning Disabilities-- A bilingual program for children of limited English-speaking ability or a special education program for handicapped children or children with specific learning disabilities meets the requirements of this subsection if such program provides services to children residing in project areas which are comparable to those provided similarly disadvantaged children residing in non-project areas.

"(d) Certain State Phase-In Programs -- A special State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that--

"(1) the program is authorized and governed specifically by the provisions of State law;

"(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school ;

"(3) the program is based on objectives, including but not limited to performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

"(4) parents and school staff are involved in comprehensive planning, implementation and evaluation of the program;

"(5) the program will benefit all children in a particular school or grade-span within a school;

"(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

"(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to ________________, 1977 shall extend to the beginning of the 1980-1981 school year,

"(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest numbers or concentrations of educationally deprived children or children from low-income families,

"(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program,

"(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8) and (9) of this subsection, to the State educational agency for any funds expended for such program,

"(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8) and (9) and the State educational agency is complying with paragraph (10).

"(e) Advance Determinations by the Commissioner--The Commissioner shall make an advance determination of whether or not a State program described in subsection (a)(1)(A) or (B) or (a)(2) meets the requirements of subsection (b) or meets the requirements of subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination.

The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner.

"(f) Advance Determination By The State Educational Agency--The State educational agency shall make an advance determination of whether or not a program described in subsection (a)(1)(C) meets the requirements of subsection (b). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State Educational Agency.

Proposed Language For Inclusion In The Legislative History

This amendment requires that advance determinations be made by the Commissioner or State Educational Agency that special state or local programs, as legislated, satisfy the requirements for an exemption from the excess costs and comparability provisions. In addition, the amendment requires that the State educational agency monitor local educational agencies to ensure that such programs are being implemented in accordance with the applicable State or local requirements. It is the committee's expectation that this pre-expenditure certification procedure will reduce the number of audit findings concerning this issue.

Exemption From The Supplement, Not Supplant Provision For Certain State and Local Compensatory Education Programs

Existing Legal Title I Framework

Section 141(a)(3)(B) of the Title I statute provides that Title I funds must be used to

> increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this title. [emphasis added]

Section 116a.22(10) of the regulations states that state and local funds must be "equitably provided...without regard to the availability of Title I funds." These provisions are designed to ensure that educationally deprived children residing in low-income areas receive their fair share of State and local compensatory education funds.

Finding *

The Congressional Title I authorization (not the amount of funds appropriated) is an expression of Congressional judgment regarding the level at which compensatory education programs should be funded in areas eligible for assistance under Title I. As the funding of state compensatory education program increases, the total amount of compensatory education funds (both federal and state) provided in Title I eligible areas will at some point equal and begin to exceed the amount of funds an LEA would have received if Title I were fully funded. At this point, some states or LEAs may feel a disincentive to continue increasing expenditures for state compensatory education

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* These findings are discussed in chapter 8 of a report prepared by the Legal Standards Project entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs. This report was prepared under contract with the National Institute of Education.

programs, and at this point, the application of the "supplement, not supplant" and "equitably provided" requirements means that Title I children will receive a program funded at a level above the level of the Title I authorization while other educationally deprived children not residing in Title I areas will receive compensatory education programs funded below this level. The disincentive to increase state aid in this circumstance could be eliminated by an amendment allowing LEAs to use State compensatory education funds exclusively in non-Title I areas to provide compensatory education programs for similarly disadvantaged children which is comparable to the program provided in Title I areas, once the level of funding (from federal, state, and local sources) in Title I areas reaches the Title I authorization.

Amendment To Tentative Draft

(Exemption From Supplement, Not Supplant Requirement)

Amend section 35(c) by striking out "Funds-A" and inserting in lieu thereof "Funds-Subject to section 36, a".

Insert the following new section after section 41:

"Limited Exemption to Supplement, Not Supplant Requirement Where Certain Special Programs for Educationally Deprived Children are Fully Funded.

"Sec. 42. Where for a fiscal year --

"(1) a local educational agency provides special State and local funds for programs for educationally deprived children which qualify under clause (A), (B), or (C) of section 41(a)(1) for an exception from the comparability and excess costs provisions under such section 41, and

"(2) the amount of such special State and local funds provided in eligible school attendance areas and for eligible schools when added to the Federal funds provided for programs under this subpart equals the funds such agency is eligible to receive for such fiscal year under section 11(a)(2) (without regard to adjustments under section 143), and under subpart 2 of part A,

then the local educational agency may, without being considered in violation of section 36(d), utilize additional State and local funds for special programs and projects which are solely for educationally deprived children residing outside of eligible school attendance areas or attending ineligible schools. The exemption in the preceding sentence does not apply to the extent the level of such special State and local funds, per child participating in such programs residing in ineligible school attendance areas or attending ineligible schools, exceeds the amount of funds, per child participating in programs in project areas provided to the agency under this part plus the amount of such special State or local funds provided for use in such areas.

Proposed Language For Inclusion in the Legislative History

The amendment creates a limited exemption from the "supplement, not supplant" requirement, where the amount of State or local compensatory education funds (satisfying the conditions for an exemption from the excess costs and comparability provisions) used in areas eligible for assistance under Title I when added to the amount of Title I funds provided to the local educational agency equals or is greater than the amount of Title I funds a local educational agency would have received that year had Title I been fully funded. Under this limited circumstance, the local educational agency may use additional state compensatory education funds exclusively in non-Title I areas until those areas are brought up to the same level of total compensatory education funding (state and federal) provided, per program participant in the Title I areas. After the non-Title I areas are brought up to this level, the "supplement, not supplant" requirement is fully applicable to the distribution of any additional state compensatory education funds.

The purpose of the amendment is to provide state and local educational agencies with an incentive to increase their level of state and local compensatory education expenditures.

Highly Concentrated Schools and Crade Spans

Existing Title I Legal Framework

Section 101 of the statute and §§116a.22(b)(6), (7), and (8) of the regulations require that Title I funds be used to meet the special educational needs of educationally deprived children residing in low-income areas. Recently, the United States Senate Committee________ emphasized this requirement, explaining that Title I funds "are not [to be] diverted to meeting other needs of school systems, however pressing these other needs may be." S. Rep. No. 91-634 (1970), U.S. Code Congressional and Administrative News, 2777.

Finding*

State officials contend that in some urban and rural school districts there are Title I schools in which 80% or more of the children enrolled are educationally deprived. Some school officials at the state and local level maintain that it makes little sense to concentrate efforts on the design of "special" programs for 80% or more of the students enrolled in a particular school. In this situation, they believe, it is difficult to design a program for educationally deprived children which is distinct from a program meeting the general needs of the school.

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*These contentions and other considerations relevant to this issue, including the conditions under which an "80% Exemption" should be created are discussed at pages 719-725 of An Analysis of the Basis for and Clarity and Restrictitiveness of the Program Requirements Applicable to Local School Districts Applying For Grants Under Title I of ESEA, a paper prepared by the Legal Standards Project of the Lawyers' Committee for Civil Rights Under Law under contract with the National Institute of Education.

[Amendment to Tentative Draft]

(Permitting Use of Federal Funds for the Non-Educationally Deprived In Schools and Grade-Spans Having 80% Educationally Deprived)

In section 32(a), after "(b) and (c)" insert ", and section 43".

At the end of new subpart 4 of part A, insert the following new section:

"Schools and Grade Spans Having High Concentrations of Educationally Deprived Children

"Sec. 43. (a) Applicability--This section applies to a school of a local educational agency serving a project area, or to a grade-span within such a school, where 80 per centum or more of the children in average daily attendance at the school or in the grade-span at the school are educationally deprived. Hereinafter, in this section, such schools or grade-spans are referred to as 'highly concentrated schools or grade-spans'.

"(b) Optional Inclusion of Children Who Are Not Educationally Deprived In Programs and Projects Assisted Under This Title--A local educational agency may, with the approval of the school advisory council established under section 35, elect to use Federal funds made available under this subpart to pay the excess costs of programs and projects designed to meet the special educational needs of all children in average daily attendance in highly concentrated schools or grade-spans, including those who are not educationally deprived, but only if the State educational agency determines that--

"(1) in the case of a school district in which there are one or more highly concentrated schools or grade-spans and there are also one or more other schools or grade-spans serving project areas, the local educational *agency makes the Federal funds provided under this subpart available for children in such highly concentrated schools or grade-spans in amounts which, per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools or grade-spans,*

"(2) the local educational agency makes special supplementary State and local funds available for the children in highly concentrated schools or grade-spans in amounts which, per child served who is not educationally deprived, equal or exceed the amount of Federal funds provided under this subpart which, per educationally deprived child served, are made available for children in such schools or grade-spans,

"(3) the local educational agency has adopted and is carrying out a comprehensive plan (hereinafter in this paragraph referred to as a 'school level plan') for each highly concentrated school and grade span which, at a minimum, shall--

> *"(A) specify the steps to be taken to improve the educational attainment of all children, including those educationally deprived children who are in greatest need of assistance, in such school or grade span,*

"(B) specify the steps to be taken to evaluate the effectiveness of the program and projects in improving the educational attainment of program participants, including the educationally deprived children who are in greatest need of assistance, and

"(C) contain other information appropriate to show that the programs and projects will be carried out in a manner consistent with section 32 (other than the requirement that funds be used for educationally deprived children), and sections 33 through 38.

"(c) Special Supplementary State or Local Funds Excluded From Comparability--State and local funds used to satisfy the requirement contained in paragraph (2) of subsection (b) shall be excluded from comparability determinations under section 36(e).

"(d) Children Attending Private Schools--Educationally deprived children who are enrolled in private elementary and secondary schools and who reside in a school attendance area normally served by a highly concentrated school or are in a highly concentrated grade span of such a school shall receive the same nature and scope of services as they would receive under section 40 if funds had not been used in the manner permitted by subsection (b) for such highly concentrated school or grade span.

Proposed Language For Inclusion In the Legislative History

This amendment recognizes the difficulties faced by local educational agencies where eighty percent or more of the children attending a particular school or grade span within such a school are educationally deprived in (1) demonstrating compliance with the general aid prohibition and the intra-school supplanting provisions and (2) administering a "special" program that includes all but a few of the students in a school.

The amendment permits schools having 80 percent or higher concentrations of educationally deprived children to utilize supplementary state and local funds along with Title I funds to design a single Title I program in which all children in attendance will be considered program participants, including those children who are not considered educationally deprived, where the local educational agency satisfies certain requirements. Where such requirements are satisfied, the highly concentrated schools will not be required to account for the Title I funds at the level of the individual child.

Subsections(b)(1) and (b)(2) of this amendment are designed to ensure that the programs provided in the highly concentrated schools or highly concentrated grade-spans within schools, are of sufficient size, scope, and quality, thereby maximizing the likelihood that the program's objectives will be accomplished. Under the amendment educationally deprived children attending such highly concentrated schools or grade spans must be allocated at a minimum, an amount of Title I funds commensurate with the *average per pupil allocation of Title I funds provided to children participating in Title I programs attending non-highly concentrated Title I project area schools. In addition, the local educational agency is required to provide supplementary state or local funds in an amount, per child attending the highly concentrated school or grade span who is not educationally deprived, equal to the amount of Title I funds provided per educationally deprived child attending such school. Thus, for example, if there are 1000 children attending a school in which 800 children are educationally deprived and the average expenditure of Title I funds is $500 per program participant, in non-highly concentrated Title I project area schools, then the highly concentrated school must receive from Title I funds $500 per educationally deprived child and in addition from supplementary state or local funds, $500 per non-educationally deprived child in the school. Thus, a total of $500,000 in Title I and supplementary state and local funds would have to be received by the highly concentrated school: $400,000 of Title I funds (800 x $500 = $400,000) and $100,000 of supplementary state or local funds (200 x $500 - $100,000). These requirements ensure that the inclusion of non-educationally deprived children neither dilutes the Title I program for educationally deprived children in that school nor reduces the Title I funds available for educationally deprived children in other Title I schools.*

Subsection (b)(3) of the amendment is designed to ensure that the educationally deprived children in greatest need of special assistance are not ignored by the local educational agency. Although this amendment permits local educational agencies to target all children in highly concentrated schools or grade-

spans, programs provided in such schools must continue to pay special attention to meeting the needs of those educationally deprived children in greatest need of special assistance. The amendment requires, for each highly concentrated school, a comprehensive school level plan which sets forth, among other things, the proposed steps which will be used for meeting the needs of those children who are furthest behind.

The amendment also provides that supplementary state or local funds used to comply with the requirement must be excluded from comparability computations. Finally, the local educational agency must determine the nature and scope of services to be provided to children attending private schools as if the exemption were not in effect.

SEA Approval of Applications

Existing Title I Legal Framework

Under the Title I legal framework the SEA is responsible for determining whether a project application submitted by a LEA complies with the program requirements under Title I as set forth in the Title I legislation and regulations.

Section 142(a)(1) of Title I provides, in relevant part, that each SEA must submit an application providing satisfactory assurance that

> payments...under Title I will be used only for programs and projects which have been approved by the State educational agency pursuant to Section 141(a) and which meet the applicable requirements of that section....

Section 141(a) of Title I also provides, in relevant part, that a LEA may receive a grant under Title I "only upon application therefor approved by the appropriate State Educational agency, upon its determination that the LEA has complied with the requirements of Section 141(a), consistent with the basic criteria established by the Commissioner [LEA Program Requirements]" (emphasis added.). The Title I regulations provide, in part, that a SEA may not approve a LEA application unless it determines that the application meets "all of the applicable requirements of Title I and the regulations" (45 C.F.R. §116.5(a)).

Section 425 of GEPA provides, in part, that before the SEA may finally disapprove a LEA application, it must afford the LEA reasonable notice and opportunity for a hearing. This requirement is contained in the Title I regulations (45 C.F.R. §116.5(c)).

Finding*

SEA approval of LEA applications is perhaps the most important administrative function states perform under Title I. The Title I legal framework imposes a clear requirement upon SEAs that they determine that an LEA application meets applicable Title I requirements before SEA approval can be granted.

Proper SEA approval of LEA applications has been a major concern. The Legal Standards Project found that improper approval of LEAs has been an issue raised frequently in Title I litigation. Improper approval has been alleged in many complaints and proper SEA approval has often been part of the relief requested in Title I law suits.**

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* These findings are discussed in chapter 1 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

** See e.g., Barrera v. Wheeler, 417 U.S. 402(1974); Lopez v. Luginbill and Roswell Indep. School District, 483 F. 2d 486 (10th Cir. 1973); Nicholson v. Pittenger, 364 F. Supp. 669 (E.D. Pa. 1973); Rosario v. Weinberger, Civil Action No. 74-922 (D.P.R., filed August 6, 1974); Beaudreau v. Weinberger, Civil Action No. CV 74-1475-R (C.D. Ca., filed May 28, 1974); Guadalupe Org. Inc., v. Tempe Elem. School District #3, Civil Action No. 740423 PHX 1 (D.N. Mex., Feb. 8, 1973); Forrest v. Ukiah Unified School Dist., Civil Action No. 72-1619 WTS (N. D. Cal., filed Dec. 13, 1972); Kerht v. Grile, Civil Action No. 71 F 142 (N.D. Ind., filed Dec. 23, 1971); Smith v. Richardson, Civil Action No. 6978 (D. Ken., filed June 15, 1971); Denetclarence v. Bd. of Educ. Indep. School Dist. #22, Civil Action No. 71-8872 (N.D. Mex., filed April 2, 1971; Poole v. Rochester City School Dist., Civil Action No. 1971-55 (W.D.N.Y. filed Feb. 12, 1971); Cantu v. Saunders, Civil Action No. 2773 (E.D. Wash., filed September, 1971); Colpitts, v. Richardson, Civil Action No. 1838-70 (D. Me. 4410-70 (D.R.I., filed 1971).

In the past, Congress has also expressed concern with SEA application approval. The 1970 report of the Senate Committee on Labor and Public Welfare stated that, "this committee's review of the operation of Title I indicated that a weakness in the operation of Title I lies in the approval process at the State level." (S. Rep. No. 91-634, U.S. Code Cong. and Adm. News, 2783 (1970)).

The Office of Education made a related observation in a program review report of state administration by noting that SEA "review and approval of Title I applications submitted by the [LEAs] is carried out in a hasty and perfunctory manner which permits little or no opportunity for the type of critical analysis and thorough review necessary to the valid and effective operation of Title I."*

The Legal Standards Project has identified a common theme that appears to pervade SEA performance of the application approval function: SEA application approval policies and procedures generally do not relate application approval to other SEA functions, e.g., monitoring, auditing, evaluation, complaint resolution, and enforcement. This weakness in the state legal framework for application approval can be traced directly to the federal legal framework: the federal requirements for SEA application approval are not expressly interrelated with other SEA functions. Thus, it is possible for a SEA to approve a facially correct LEA application at a time when the SEA has documented evidence that the LEA may not have conformed to Title

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* See p. 124 of An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

I requirements, e.g., federal or state program review reports or audit reports. Similarily, the SEA is not required to determine whether the results of past evaluations have been taken into consideration in designing the project described in the application.

A statutory amendment would clarify the relationship of application approval to other SEA administrative functions.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to approval of applications
by the State educational agency)

Insert the following section as the first section in new subpart 2:

"Application Approval

"Sec. 111. (a) Requirements for Approval -- (1) A State educational agency shall approve an application of a local educational agency or a State agency under this title if (A) such State educational agency is satisfied, after considering the factors specified in paragraph (2), that such applicant agency will use the funds received under the application in a manner which meets the requirements of this title, the General Education Provisions Act, and the rules, regulations, procedures, guidelines, criteria, or other requirements adopted by such agency which pertain to programs and projects assisted under this title, and (B) such applicant agency is not out of compliance with a determination of the State educational agency or the Commissioner that it repay

funds paid it under this title which were misused, and is not out of compliance with a compliance agreement under section 116(c).

(2) A State educational agency may approve an application under subsection (a), only after it has considered, where pertinent, (A) the results of Federal and State audits, (B) the results of Federal and State monitoring reports, (C) administrative complaints made by parents or other individuals concerning the applicant agency's compliance with this title, and (4) evaluations conducted under section 34(g).

"(b) Payments--Except as provided in section 144, a State educational agency may make payments from funds received under this title only for programs and projects which it has approved under subsection (a).

"(c) Opportunity for Hearing--A State educational agency shall not finally disapprove in whole or in part any application for funds under part A or under subpart 2 or subpart 3 of part B without first affording the local educational agency or other applicant submitting the application reasonable notice and opportunity for a hearing.

Proposed Language for Inclusion in the Legislative History

This amendment clarifies the interrelationship between the State educational agency's function of approving applications and other State administrative functions performed under this title, e.g., monitoring, auditing, complaint resolution, and enforcement. The amendment requires that, in addition to reviewing the LEA's applications, the State educational agency must review and take into consideration, pertinent federal and State audits and program review reports and administrative complaints and evaluations.

The Committee feels that application approval is perhaps the most important function performed by State educational agencies under Title I. It enables the State educational agency to determine whether an applicant agency has complied with applicable program requirements before the applicant agency implements the program or project described in the application. In addition, the review and approval process gives the State educational agency an opportunity to comment on the quality of the proposed program or project; to provide any necessary technical assistance; and to place the applicant agency on notice as to practices which would be considered unacceptable under Title I.

Application approval is also significant because of the important relationship between the application and State educational agency monitoring, auditing, technical assistance, complaint resolution, evaluation and enforcement.

Furthermore, the effects of approving an application that does not meet all the applicable requirements can include costly audit exceptions and appeal to the Audit Hearing Board; a determination that illegal expenditures must be reimbursed; burdensome attempts to achieve compliance in mid-year; or even litigation by Title I parents and children seeking to insure that their rights are protected. A well designed application approval process can help applicant agencies avoid such compliance problems.

Other benefits flowing from effective review of applications were mentioned in a recent report from the Office of the Assistant Secretary for Education, the DHEW Sanction Study (1977):

> The SEAs are charged with the basic responsibility for reviewing LEA applications to determine whether the programs described in the application conform to the Title I requirements. The importance of this function for quality programming can not be overemphasized. SEAs have the opportunity to exercise detailed pre-expenditure control in their application reviews. (Emphasis added).

With respect to quality programming, the Committee wishes to clarify its intent in requiring that State educational agencies review and take into consideration pertinent evaluations prior to approval of an application. The Committee intends that State educational agencies determine whether the project described in the application reflects the results of evaluations of that project, i.e., State educational agencies should not routinely approve applications for project designs which previous evaluations have demonstrated are of little value in raising the achievement level of participants.

The Committee believes that more effective State performance of the application approval function would be facilitated if the Commissioner were to provide increased technical assistance to State educational agencies, including model application approval procedures to relate application approval to other administrative functions and a model application form to assist State educational agencies in designing forms for their own use.

SEA Rulemaking

Existing Title I Legal Framework

The Title I statute is silent about the authority of SEAs to promulgate rules and regulations, not inconsistent with the statute or regulations, for the operation of Title I in the state.

The Title I regulations expressly authorize SEAs to promulgate rules only in the area of parent involvement (45 C.F.R. §116a.25 (g)(1)) yet they also require that parent advisory councils receive copies of certain documents, "including State Title I regulations and guidelines" (45 C.F.R. §116a.25(g)(1)). Since this provision of the regulations does not expressly limit state rulemaking to parental participation, it implies that states may establish additional rules or procedures for Title I which are not inconsistent with the statute or regulations.

Former ESEA Title I Program Guides issued by the Commissioner (Nos. 24 and 36) have clearly indicated that SEAs could establish additional criteria for the approval of LEA applications and could apply these criteria during the approval of applications. Furthermore, OE correspondence with certain SEAs has expressly stated that SEAs have authority to establish standards for LEA proposals and that OE "does not set limits on State guidelines, other than to see that Federal law is not contravened."

Finding*

Despite these affirmative references in former Program Guides and in OE correspondence generally permitting SEAs to promulgate regulations not inconsistent with Title I requirements, some SEAs are uncertain about the extent of their authority to issue State Title I rules, regulations, criteria and guidelines in areas other than parent involvement. Other SEAs are more certain that federal regulations provide implied authority to establish rules, regulations, guidelines or criteria not inconsistent with the federal statute or regulations. A statutory amendment would clarify the situation by making express what is implicit: SEAs may establish rules, regulations, guidelines, criteria, or other guidelines for Title I that do not contravene federal law.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to State rulemaking)

Insert the following as the second section of new subpart 2:

"State Rulemaking

"Sec. 112. Nothing in this title shall be deemed to prohibit a State educational agency from adopting rules, regulations, procedures, guidelines, criteria, or other requirements applicable to programs and projects assisted under this title, if they do not

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* These findings are discussed in chapter 2 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

conflict with the provisions of this title or with regulations promulgated by the Commissioner implementing this title or other applicable Federal law. The Commissioner shall encourage State educational agencies, in adopting such rules, regulations, procedures, guidelines, criteria, or other requirements to recognize the special and unique needs and circumstances of the State and of each local educational agency in the State.

Proposed Language for Inclusion in the Legislative History

The amendment clarifies the authority of state educational agencies to establish State Title I rules, regulations, guidelines, criteria, and other requirements that are not inconsistent with federal law or regulations. The National Institute of Education's report, Administration of Compensatory Education, concluded that SEA Title I rulemaking authority is unclear and that this has produced divergent SEA interpretations of their authority to establish State Title I rules and regulations.

In enacting Title I, Congress placed significant discretion and responsibility for programs at the State level. The Committee has previously emphasized the crucial role that State educational agencies play in the administration of Title I. The important function they perform in such areas as application approval, monitoring, auditing, and enforcement should not be undercut because of uncertainty about their authority to establish State Title I rules and regulations. However, the Committee also wishes to emphasize the need for the Commissioner to clarify the scope of State educational agencies' authority to establish State Title I rules, *regulations, guidelines, criteria, or other requirements. The Commissioner should insure that State educational agencies do not establish overly restrictive requirements because of State misinterpretations of federal regulations. Thus, the Commissioner should clarify the various legal program design options and the circumstances under which different program components may be included in program designs.*

Technical Assistance

Existing Title I Legal Framework

Section 143(b) of Title I addresses the SEA technical assistance function in the context of a statutory provision governing the maximum amount of funds for state administration and technical assistance. The Commissioner is authorized to pay each state amounts equal to the amounts expended by it for the proper and efficient performance of its duties, "including technical assistance for the measurements and evaluations required by the statute." The Title I regulations contain a similar requirement (45 C.F.R. §116.4)

Although the statute and the regulations emphasize technical assistance for evaluation, the legislative history indicates that Congress did not intend to limit SEA technical assistance to evaluation. S. Rpt. No. 91-634 (1970) shows that SEA technical assistance should provide LEAs with expertise to improve the quality of Title I programs.

> As a rule, [LEAs] rely on the [SEAs] for expertise and guidance in meeting the requirements of the law. Since Title I makes funds available for state administration of the program, the [SEAs] can and should assist [LEAs] in planning, developing and evaluating Title I programs and projects.*

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* Senate Report 917634 (1970) U.S. Code Cong. and Admin. News 2775.

Finding*

The Title I statute and regulations emphasize technical assistance for evaluation. Furthermore, they do not refer expressly to information dissemination as a state responsibility, e.g., dissemination of educational research and information about successful Title I projects.

Despite the emphasis on technical assistance for evaluation, it is clear that SEAs are expected by OE, consistent with the legislative history, to provide technical assistance in areas other than evaluation. However, the regulations only refer to technical assistance for evaluation and the scope of SEA technical assistance is unclear. In general, SEA technical assistance efforts vary widely in approach and quality. For example, one SEA concentrates much of its technical assistance inthe area of parent involvement. Another SEA provides technical assistance primarily during the operational phase which another SEA gives technical assistance during the planning, development, and implementation of Title I projects. One SEA is concerned with technical assistance focused on compliance and program design. In contrast, another SEA emphasizes program quality rather than compliance.

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* These findings are discussed in chapter 3 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

With respect to information dissemination, the scope of the responsibility is also unclear. Some states have written information dissemination policies which vary widely in quality and comprehensiveness. Others have no written policies, but appear to disseminate information randomly.

An amendment to the Title I statute would clarify Congressional intent with respect to comprehensive technical assistance and information dissemination.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to technical assistance
and dissemination of information)

Insert this section as third section in new subpart 2:

"Technical Assistance and Dissemination of Information

"Sec. 113. Each State educational agency shall carry on a comprehensive program to provide technical assistance to local educational agencies and State agencies with respect to the use of funds received under this title. Such a program shall include technical assistance for management procedures, for planning, development, implementation and evaluation of programs, and for preparation of applications, as well as other forms of technical assistance needed by local educational agencies and State agencies. Each State educational agency shall also adopt effective procedures for disseminating to local educational agencies and State agencies (1) significant and relevant information de-

rived from educational research, (2) information about successful compensatory education projects, and (3) such other information as will assist local educational agencies and State agencies in planning, developing, implementing, and evaluating programs assisted under this title.

Proposed Language for Inclusion in the Legislative History

This amendment clarifies the scope of the State educational agency's responsibility to provide comprehensive technical assistance to local educational agencies and State agencies receiving funds under Title I. Furthermore, it requires State educational agencies to develop effective procedures for disseminating to local educational agencies and State agencies receiving assistance under this title (1) significant and relevant information derived from educational research; (2) information about successful Title I projects and (3) such other information as will assist local educational agencies in planning, developing, implementing, and evaluating programs and projects under this title.

A recent study prepared by the Office of the Assistant Secretary for Education, The DHEW Sanction Study, (1977), concluded that, "State technical assistance efforts vary widely in quality and approach." The Committee realizes that different needs may dictate different forms of and approaches to technical assistance provided by State educational agencies.

The Committee's intent is that State educational agencies provide a program of comprehensive technical assistance, including assistance in such areas as management, program planning, development and implementation, evaluation, preparation of the following year's application, and other forms of technical assistance that may be appropriate.

The Committee believes that a broader, more balanced approach to technical assistance will help improve program quality and compliance, as opposed to minimum compliance with the applicable provisions of this title and the regulations.

SEA Monitoring

Existing Title I Legal Framework

Section 434(b)(1)(A)(I) of GEPA provides that the State will, through its State educational agency, "provide for such methods of administration as are necessary for the proper and efficient administration" of the programs to which the general application applies. The GEPA regulations implement this provision by indicating that:

> State agencies shall constantly monitor performance under federally-supported activities to assure that adequate progress is being made towards achieving the goals of the grant. This review shall be made for each function or activity of each grant as set forth in the approved State plan or application (45 C.F.R. §100b.431 (1976)).

Findings*

The GEPA statute and regulations do not contain minimum standards that clarify the State educational agency's responsibility to monitor. The Title I statute and regulations, silent on this point, do nothing to fill the void.

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* These findings are discussed in chapter 4 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

SEA monitoring policies vary widely from state to state. Some SEA monitoring instruments reviewed by the Legal Standards Project are insufficient to insure that critical program requirements are monitored. Other SEA monitoring policies differ with respect to the purpose and scope of monitoring; the frequency and scope of on-site visits; the issurance of monitoring reports and follow-up on such reports. Furthermore, the Legal Standards Project found that some SEA monitoring policies do not provide that a copy of the monitoring report be made available to parent advisory councils and other citizens.

In addition, the federal legal framework is silent about the relationship of monitoring reports to application approval. Thus, it is possible for a SEA to approve an application from a LEA when non-complying practices documented in a SEA monitoring report have not been corrected by the time the LEA submits its application.

An amendment to the Title I statute should clarify what the general monitoring provision of the GEPA regulations means in the context of Title I.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to monitoring by the
State educational agency)

New section to be added as fourth sentence of new subpart 2:

"Monitoring

"Sec. 114. Each State educational agency shall adopt standards, consistent with minimum standards established

by the Commissioner, for monitoring the effectiveness of programs and projects assisted under this title. Such standards shall (1)describe the purpose and scope of monitoring;(2)specify the frequency of on-site visits;(3)describe the procedures for issuing and responding to monitoring reports,including but not limited to,the period of time in which the State educational agency must issue its report, the period of time in which the applicant agency must respond, and the appropriate follow-up by the State educational agency, (4)specify the methods for making monitoring reports available to parents, State and local auditors, and other persons,and (6)specify the methods for ensuring that non-compliant practices are corrected.

Proposed Language For Inclusion In The Legislative History

The amendment would require State educational agencies to establish procedures, consistent with minimum standards established by the Commissioner, for monitoring the performance of Title I programs and projects.

The Committee believes that monitoring is important because it enables the State educational agency to (1) determine compliance with legal requirements; (2) ascertain whether the program is being implemented pursuant to the application; (3) render technical assistance; (4) determine the quality of the services provided to participating children; and (5) identify future technical assistance needs.

The Committee has previously stressed the importance of SEA monitoring of Title I programs. (H. Rpt. No. 93-805 (1974)). Yet, a 1975 GAO report about Title I (Assessment of Reading Activities Under the Federal Program of Aid for Educationally Deprived Children) cited a need for improved monitoring of Title I programs. The GAO study found that about 35 per cent of the

SEAs visited as part of the study had no formal monitoring systems for Title I. The report concluded that the SEAs reviewed "need to establish monitoring systems, formalize existing systems, or conduct more indepth reviews during monitoring visits if these visits are to be useful in evaluating LEA performance." (p. 15).

Monitoring is an important part of State administration of Title I. The Office of Education should, in the course of conducting its own program reviews of state administration, insure that such state procedures have been developed and that they are consistent with minimum standards for State educational agency monitoring established by the Commissioner in Title I regulations.

SEA Complaint Resolution

Existing Title I Legal Framework

45 C.F.R. §116.6 requires SEAs to "establish procedures for investigating complaints alleging violations of Title I." Anyone who files a complaint must be allowed to present evidence to the SEA and is entitled to resolution of the complaint "normally" no later than sixty days after filing. Information concerning the existence of the procedure must be disseminated "to interested parties, including parent advisory councils."

45 C.F.R. §116.7(b) requires SEAs to "report to the Commission[er] on the disposition of all complaints filed and reviewed pursuant to procedures developed under Section 116.6." Status reports must be submitted concerning any case not "fully investigated and resolved" within sixty days. Final reports, including the complainant's name and address, the allegations of the complaint, "a summary of the results of the investigation and any hearings," and a statement of the disposition of the case and the reasons therefor, must be submitted for each case "fully investigated." Copies of the disposition must be sent to the Commissioner and the parties involved.

Finding*

Though the two OE complaint resolution regulations set forth above contain sound requirements, they are incomplete. The SEA complaint resolution procedure is not interlocked with LEA and OE complaint resolution procedures in a comprehensive system explicitly describing responsibilities at all three levels; procedures at the latter two levels do not exist at all.

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* These findings are discussed in chapter 9 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

The regulations establishing the state procedures, furthermore, do not require an impartial investigator in the event of a complaint against the SEA, itself, nor do they require hearings or on-site visits by the SEA investigator. The regulations do not provide for a final appeal to OE and do not place OE in an oversight role. In addition, there is presently no way that OE can determine from a review of an SEA application an annual program plan whether an SEA has actually developed the required procedures.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to complaint resolution)

Add as new section to subpart 2:

"Complaint Resolution

"Sec. 115. Each State educational agency shall adopt written procedures for receiving complaints, or reviewing appeals from decisions of local educational agencies with respect to complaints, concerning violations of this title or applicable provisions of the General Education Provisions Act in connection with programs assisted under this title, and for conducting any on-site investigations of such complaints which the State educational agency deems necessary. Such procedures shall include--

(1) the dissemination to organizations and individuals interested in programs assisted under this title of the name, title, address, and telephone number of any official of the State educational agency responsible for receiving complaints or for reviewing complaints and appeals from the final complaint resolution decision of a local educational agency and for conducting, if necessary, an independent investigation of the complaint;

(2) specific time limits for resolving the complaint or completing the review and, if necessary, the independent on-site investigation, which shall not exceed sixty days unless exceptional circumstances exist;

(3) an opportunity for the complainant or the complainant's representative, or both, and the local educational agency involved to present evidence, including the opportunity to question parties to the dispute and any of their witnesses;

(4) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

(5) a requirement that the complainant, the complainant's representative, the local educational agency, the district advisory council, and appropriate school advisory councils be notified in writing, by the State educational agency within ten days after the resolution of the complaint or appeal, of the nature of the resolution and the reasons for such resolution;

(6) the right to appeal the final resolution of the State educational agency to the Commissioner within thirty days after receipt of the written decision;

(7) dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school advisory councils; and

(8) the provision to each complainant of a statement that exhaustion of the State educational agency complaint procedure is not a prerequisite to filing a complaint with the Commissioner.

Proposed Language For Inclusion in the Legislative History

This amendment clarifies the responsibilities of state educational agencies to resolve complaints about Title I rpograms and projects.

The need for a complaint resolution procedure at the state level stems form the need, generally, for a comprehensive system of procedures interlocking all levels (LEA, SEA, and OE), and the important role the SEA would play in that system.

Opportunity for appeal from LEA decisions, however, and access to a forum other than one presided over by the officials against whom a complaint is made (i.e., LEA officials), are essential parts of any comprehensive, interlocking complaint resolution procedure.

Appeal from an LEA's resolution of a complaint could be to either the SEA or a federal office. Either could offer a forum independent of the LEA. SEAs, however, are familiar with portions of an LEA's activities, namely those funded by the state, that are not normally the concern of federal agencies. Because they know more about the state funded context in which disputes concerning federally-funded programs arise, SEAs are first level appellate agencies more appropriate than federal offices. Complainants, however, should not be required to appeal first to SEAs since some issues, such as all those on which the views of the SEA are already firmly established, might be more appropriate for immediate presentation to OE.

SEA Withholding of Payments

Existing Title I Legal Framework

Congress clearly intended that SEAs enforce Title I requirements. Section 142(a) of Title I expressly provides that a state must assure the Commissioner that it will enforce compliance with applicable requirements. The Title I statute, however, does not expressly prescribe the specific enforcement options, e.g., withholding or suspension of funds that SEAs may use when a LEA fails to comply substantially with the requirements of Title I and Title I regulations only expressly authorize SEAs to withhold funds for violations of comparability requirements. (45 C.F.R. §116a.26(f)(1)).

Section 425 (a) of GEPA implies that Congress contemplated the withholding or suspension of funds by SEAs. This provision, which governs review of applications, includes "failing to provide funds in amounts in accord with the requirements of laws and regulations" and "terminating further assistance for an approved program" as reasons why an applicant may request an SEA to hold formal hearing.

Finding*

The Legal Standards Project's review of state enforcement policies indicated that widely varying interpretations of SEA authority to withhold or suspend funds exist. These policies ranged from a position of ignorance of what would be done if a violation other than comparability were discovered after application approval, to a position that the SEA can withhold funds for any violation. In addition, some SEAs indicated they had authority to withhold, but not to suspend funds. Others indicated they could withhold and suspend funds.

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* These findings are discussed in chapter 6 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

Such divergent interpretations of state authority could be remedied by a statutory amendment clarifying state authority to withhold or suspend payments to LEAs for failure to comply substantially with Title I requirements. Based on these findings, the Legal Standards Project has drafted a statutory amendment which (a) using the statutory language of the Commissioner's withholding and suspension authority as model, expressly authorizes a SEA to withhold payments and to suspend payments pending a hearing and (b) authorizes a SEA to enter into a compliance agreement in lieu of withholding. The compliance agreement concept is based on a provision in the revenue sharing legislation which requires a compliance agreement before funds which have been withheld can be released. (See §122(d) and (e) of the State and Local Fiscal Assistance Act of 1972, as amended in 1976.) We concluded that, for Title I purposes, a SEA would have greater flexibility if it were authorized to enter into a compliance agreement in lieu of withholding, rather than as a condition precedent to the release of withheld funds.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to Withholding by the State educational agency and compliance agreements)

New section to be added to new subpart 2:

"Withholding of Payments

"Sec. 116. (a) Withholding -- Whenever a State educational agency, after reasonable notice and opportunity for a hearing to any local educational agency or State agency, finds that there has been a failure to comply substantially with any provision of subpart 3 of part A or subpart 2 or 3 of part B, the State educational agency shall notify such agency that further payments will not be made to it under this title until it is satisfied that there is no longer any such failure to comply. Until it is so satisfied, no further payments shall be made to such agency under this title, except as may be provided in a compliance agreement entered into under subsection (c). Pending the outcome of any proceeding under this subsection, the State educational agency may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) Notice to Public of State Withholding -- Upon receipt by a local educational agency or a State agency of a notice that the State educational agency pursuant to subsection (a) is withholding payment the State educational agency shall inform

the district advisory council and shall take such additional action as may be necessary to bring the State action to the attention of the public.

"(c) Compliance Agreements -- A State educational agency may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which (1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, and with the applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency, (2) which addresses all the matters that formed the basis for the initiation of the withholding action by the state educational agency and (3) which may consist of a series of agreements that in the aggregate dispose of all such matters. Within 15 days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"(d) Review by the Commissioner--A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (a) to the Commissioner.

Proposed Language for Inclusion in the Legislative History

This amendment clarifies the authority of State educational agencies to withhold payments when, after reasonable notice and opportunity for hearing to any local educational agency or State agency, it finds that there has been a failure to comply substantially with any applicable requirement.

The National Institute of Education's Report, Administration of Compensatory Education (1977), discussed the authority of State educational agencies to enforce Title I requirements and found that although the States had implied authority to withhold or suspend funds, the manner in which states implemented this authority was "quite inconsistent". In discussing the problems caused by implied rather than express enforcement authority, the study concluded that, "the most potentially troublesome is the authority of the state to suspend or withhold funding from an LEA" (p. 48).

The amendment gives the State educational agency discretion to suspend the initiation or continuation of a withholding action by entering into a compliance agreement with a local educational agency or State agency receiving funds under this title. The Committee intends that, if a compliance agreement has been entered into and the State educational agency subsequently finds, after reasonable notice and opportunity for a hearing, that there has been a failure to comply substantially with the compliance agreement, then the State educational agency shall not make further payments to the local educational agency or State agency until it satisfied that there is no longer any such failure to comply.

Thus, if the State educational agency finds that a local educational agency or State agency has not complied with the compliance agreement, it shall withhold payments under this title until it is satisfied that there is no longer a failure to comply. The Committee does not intend that another compliance agreement be entered into if the State educational agency, after reasonable notice and opportunity for a hearing, finds that the affected agency has not complied with the terms of the compliance agreement. In such cases, the Committee intends that the State educational agency withhold payments under this title.

With respect to the relationship between compliance agreements under this section and the audit resolution procedures required under section 117(b), the Committee intends that compliance agreements not be used to reduce or forgive any amount of funds which final State audit resolution determinations have determined were misspent or misapplied and must be repaid.

The NIE report, Administration of Compensatory Education, also found that existing Title I regulations refer to the obligation to enforce, but are not organized to facilitate enforcement: "Enforcement related provisions are scattered throughout the Federal legal framework and there is no separate section in the Title I regulations that contains a list of SEA enforcement options and sanctions and the authority to impose them" (p. 48). The Committee feels that SEA enforcement of Title I requirements is an important state function designed to insure that Congressional intent is furthered. Accordingly, the Committee strongly urges the Commissioner to clarify the range and scope of SEA enforcement authority and sanctions by insuring that regulations promulgated under this title are

(1) organized to facilitate SEA enforcement of Title I requirements and (2) contain a section describing enforcement options and sanctions and the legal basis for such sanctions. At a minimum, this section of the regulations should refer to such enforcement options or sanctions as disapproval of applications which do not conform to applicable requirements, the compliance aspect of monitoring and auditing, audit resolution, repayment of misspent or misapplied funds, withholding of payments and compliance agreements.

Auditing and Audit Resolution

Existing Title I Legal Framework

Section 431(a)(1) of GEPA requires SEAs and LEAs to keep certain records and "other such records as will facilitate an effective audit". In addition, SEAs and LEAs must permit access "for the purpose of audit and examination" to any "books, documents, papers, and records" which are determined to be relevant or pertinent (Section 434(a)(2) of GEPA).

The GEPA regulations also impose auditing requirements. 45 C.F.R. §100b.301(h) states that a state agency's financial management system for grants and a sub-grantee's financial management system for subgrants shall provide for:

> audits to be made by the State agency or subgrantee or at its direction to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the complaince with applicable statutes, regulations, and terms and conditions of the grant or subgrant. The grantee or subgrantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

As for audit resolution, the GEPA regulations, in pertinent part, require that,

> State agency financial management systems for grants and sub-grantee financial management systems for subgrants shall provide for
>
> > . . .(i) a systematic method to assure timely and appropriate resolution of audit findings and recommendations (45 C.F.R. §100b.301(i)).

No express requirement exists in the Title I statute or regulations that SEAs recoup misspent funds when State audit resolution procedures result in a final determination that Title I funds have been illegally expended.

The GEPA statute is also silent on this point. However, th GEPA regulations by implication do authorize such SEA recoupment. These regulations do not, however, reflect HEW/OGC's interpretation, which is essential to understanding the GEPA regulations. As interpreted by HEW/OGC, the normal procedure used by the federal government to recoup misspent Title I funds is to indicate to the State involved that it must remit the amount of misspent funds to OE for deposit as miscellaneous receipts of the U.S. Treasury.*

If this approach fails, the Commissioner may withhold the amount owed from the state's allocation for the following year.** If funds are withheld from any state's allocation because of an audit exception, OGC is of the opinion that although the payment to that state may be reduced on account of the debt to the U.S. (for misspending federal funds), the state's allocation remains unchanged.

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* HEW Memorandum from Harry J. Chernock, Assistant General Counsel for Education to Associate Commissioner for Elementary and Secondary Education entitled, "Settlement of Audit Exceptions in Title I, Elementary and Secondary Education Programs", (June 11, 1971). See §143(a)(1) of Title I (20 U.S.C. 241g (a)(1)); §435 of GEPA (20 U.S.C. 1232d); 45 C.F.R. §100b.53

** Id. However, if an audit exception is taken with regard to an expenditure under an appropriation before the time has expired for obligation under the carryover provision, §412(b) of GEPA (20 U.S.C. 1226(b)), OGC concludes that those funds would be available for re-obligation to be expended for legitimate Title I purposes.

> The state is, or course, responsible for approving projects of local educational agencies within the limits of the amounts of their entitlements established in accordance with Section 103 of the Act as ratably reduced pursuant to Section 144. The State would be paid for the aggregate amount of approved projects in the State less the amount withheld because of an audit exception. The differences between the aggregate amount and the amount paid to the State would have to be made up out of State and local funds...[Emphasis added.]

The principles set forth in the OGC memorandum quoted above are equally applicable to the recoupment of misspent funds pursuant to an SEA audit. 45 C.F.R. §100b.53 which sets forth the relevant federal policies with respect to the methods of payments of federal funds, including Title I, is applicable to both federal and state audits:

> Each state agency and subgrantee, in its maintenance of expenditure accounts, records, and reports shall promptly make any necessary adjustments in its records to reflect . . . over-payments resulting from Federal or State administrative reviews or audits or otherwise . . . [Emphasis added.]

Furthermore, 45 C.F.R. §100b.301(h) and (i) require that SEAs undertake fiscal and compliance audits and that they develop systematic methods to assure timely and appropriate resolution of audit findings.

In sum, applying the principles set forth in the OGC memorandum, the normal procedure for an SEA to use to recoup misspent Title I funds is to indicate to the LEA that it must remit the amount specified by the SEA. If this approach fails, the SEA may satisfy audit exceptions by withholding payment or a portion of the LEA's subsequent year's entitlement. In this case, the difference between the aggregate amount (i.e., the LEA's allocation) and the amount paid to the LEA would have to be made up by the LEA out of state or local funds.

Finding*

The GEPA regulations require that audits determine both "the fiscal integrity of grant or subgrant financial transactions and reports and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant..."(emphasis added.)

Despite this requirement that the scope of audits include both fiscal integrity and legal compliance, the Legal Standards Project found that only a few states have written audit policies and procedures that indicate that audits must consider fiscal integrity and compliance. The Legal Standards Project has concluded, on the basis of written SEA materials and interviews with SEA Title I personnel and auditors, that in many states only fiscal audits are conducted.

This finding was supported by a recent study completed by the Office of the Assistant Secretary for Education, the DHEW Sanction Study (1977), which concluded that, "failure to meet audit responsibilities at the SEA/LEA levels is one of the most frequent findings of the DHEW Audit Agency".

With respect to audit resolution, the Legal Standards Project found that the GEPA regulations do not set forth minimum standards for audit resolution and that only a few SEAs had written procedures for audit resolution that appeared to constitute "a systematic method to assure timely and appropriate resolution of audit findings and recommendations." Several states either did not appear to have such written procedures or indicated that only informal procedures existed for audit resolution. In general, most states did not appear to have audit appeal procedures, firm deadlines for audit resolution steps, or methods to determine whether corrective action was taken based on audit findings and recommendations.

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* These findings are discussed in chapters 6 and 7 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under contract with the National Institute of Education.

With respect to the repayment of misspent or misapplied funds, the Legal Standards Project found a lack of written state policies and procedures for recouping misspent Title I funds, which state audit resolution procedures finally determined were illegally expended.

Two SEAs with written policies indicated that their approach reflected the recoupment authority implied in the GEPA regulations. In those two states sustained non-federal audit exceptions are considered "overpayments", and LEAs must either send the SEA a check for the "overpayment" or have the amount of the "overpayment" credited as an advance payment and subtracted from future Title I funds to be paid the LEA. Such SEA policies are inconsistent with the HEW/OGC policy which requires that the LEA and/or the SEA commit local or state funds to the Title I program to replace funds withheld because of past misexpenditures.

Set forth below is an example of what could happen if Congress does not clarify its intent in this area. Assume that a LEA has a $10 million Title I allocation and spends $1 million to renovate a gymnasium for all children (general aid violation).

In year I, the LEA uses $1 million of Title I funds to renovate the gym. During year 1 a SEA auditor discovers the general aid violation and recommends in the audit report that the misspent funds be recouped. The SEA makes several demands for repayment, but the LEA refuses to remit the misspent funds.

In year 2, the SEA considers the audit exception to be an "overpayment", withholds $1 million from the LEA allocation and does not require the LEA to make up the difference from local and state funds, i.e., in year 2 the LEA forfeits part of its allocation because of past mis-expenditures.

The net effect of such a SEA policy is to permit the LEA, in contravention of the applicable Title I requirement, to succeed in renovating a gym without expending any state or local funds. Furthermore, the intended beneficiaries of Title I, educationally deprived children, lost $2 million in services under Title I for a two year period, i.e., the year in which the LEA misspent the Title I funds and the year in which the SEA withheld the "overpayment" from the LEAs allocation. Congress did not intend such a result; nor did OE in the GEPA regulations intend to punish the intended beneficiaries for the misdeeds of the LEA.

In view of the problems with auditing and audit resolution, the Title I statute, now silent on both points, should be amended to clarify State responsibility in this area.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to audits and audit resolution)

Add as last sentence of new subpart 2:

"Audits and Audit Resolution

"Sec. 117. (a) Auditing--Each State shall make provision for audits of the expenditure of funds received under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. Such audits shall be made with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

"(b) Audit Resolution--Each State educational agency shall have in effect written procedures, meeting minimum standards established by the Commissioner, to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include a description of the audit resolution process, timetables for each step of the process, and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of federal funds which were misspent or misapplied, such repayment may be made only from funds derived from non-

federal sources. Such repayments may be made in either a single payment or in installments over a period not to exceed three years.

"(c) Requirement for Repayment--A local educational agency or State agency shall repay from non-federal sources the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied.

"(d) Review By The Commissioner--A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (b) to the Commissioner.

"(e) Failure to Repay--If, following an affirmance by the Commissioner of a final determination of a State educational agency under subsection (b) or failure by a local educational agency or State agency to seek timely review by the Commissioner, such local educational agency or State agency refuses to repay from non-federal sources funds which have been misspent or misapplied under this title, the State educational agency shall promptly notify the Commissioner and the Commissioner shall promptly initiate collection action.

Amendment To Sec. 425(a) of GEPA

(Permitting applicant agencies to appeal final state audit resolution findings to the Commissioner)

"Sec._______. Section 425(a) of the General Education Provisions Act is amended by striking out ___ "or (3)" and inserting in lieu thereof the following: "(3) ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, and (4)".

Proposed Language for Inclusion in the Legislative History

The amendment clarifies the audit and audit resolution responsibilities of States. With respect to audits, it provides that each State shall make provision for audits of the expenditure of funds received under this title and that each such audit shall determine both fiscal integrity and compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

The Committee notes that a recent study completed by the Office of the Assistant Secretary for Education, the DHEW Sanction Study, (1977), concluded that, "Failure to meet audit responsibilities at the SEA/LEA levels is one of the most frequent findings of the DHEW Audit Agency".

The Committee is concerned that the Commissioner has not given sufficient guidance to State educational agencies about their auditing and audit resolution responsibilities. Applicable regulations require that the scope of audits conducted by State agencies or subgrantees include both "fiscal integrity" and "compliance with applicable statutes, regulations, and terms and conditions of the grant of subgrant" (45 C.F.R. §100b.301(h)). Yet, the NIE report, Administration of Compensatory Education, concluded that the audit policies of most state educational agencies are concerned with fiscal audits, not fiscal and compliance audits.

The Committee recognizes that in some states, audits may be conducted by auditors from State agencies other than the State educational agency or by auditors employed by local educational agencies. In the interest of uniform standards for audits of programs under this title, the Committee believes that the Commissioner and the HEW

Office of Inspector General should establish minimum standards to guide non-federal auditors in conducting audits of Title I that include both fiscal and compliance considerations. With respect to the compliance aspect of Title I audits by non-federal auditors, the Committee believes that, at a minimum, the compliance portion of a general audit should include a review of the following areas: (1) school attendance area eligibility and targeting; (2) eligibility and targeting of children and (3) supplemental use of Title I funds and the prohibition concerning the use of Title I funds for general aid.

The Committee believes that an audit of these areas is necessary because these subjects concern the fundamental purposes of the Act: to provide supplemental financial assistance to local educational agencies serving areas with high concentrations of children from low-income families to enable these agencies to expand and improve programs which contribute particularly to meeting the special educational needs of educationally deprived children residing in such areas.

The Committee also notes that the GAO audit standards issued under the signature of the Comptroller General, Standards for Audit of Governmental Organizations, Programs, Activities, Functions, (1974), address the subject of audit instructions by stating that

> Federal . . . agencies that request state, local or other levels to make audits are expected to prepare broad, comprehensive audit instructions, tailored to particular programs or program areas.

The Committee believes that non-federal auditors who conduct such audits would be well served by having a set of Title I audit instructions which have been reviewed and approved by HEW's

Office of General Counsel.

The amendment clarifies the audit resolution responsibilities of State educational agencies under this title by requiring that SEAs establish written procedures, consistent with minimum standards established by the Commissioner, for the resolution of audit findings and recommendations.

The NIE report, Administration of Compensatory Education (1977), found that, in the absence of clear standards for state audit resolution, "SEA audit resolution policies vary widely; Some SEAs do not have such policies; others have informal procedures for resolving audit findings. In the states that have written audit resolution policies, very few have established deadlines for completion of the process." The Committee intends that State educational agency audit resolution procedures include procedures for receiving and, where appropriate, reviewing audit reports and determinations made by auditors from State agencies other than the State educational agency and by auditors employed by local educational agencies.

The amendment also clarifies the responsibility of the State educational agency to recoup from non-federal sources, funds which audit resolution procedures show were misspent under this title. The Committee is concerned that some state policies for the recoupment of misspent funds under this title permit the State educational agency to subtract the amount of the misexpended funds from a local educational agency's allocation and do not require that such misexpenditures be repaid from non-federal sources.

It is not the Committee's intent that the intended beneficiaries of the program, educationally deprived children, be penalized because a local educational agency may misspend funds under this title in one year and then have the misspent funds subtracted from its allocation in another year. If such a policy were permitted, the program's intended beneficiaries would be penalized twice for the misdeeds of a local educational agency. First, they would receive less Title I services in the year the funds were misspent. Second, they would receive less Title I services in the year the allocation was reduced by the amount of the misexpenditures, unless the misspent funds were repaid from non-federal sources. The Committee intends that when the State audit resolution process requires the repayment of federal funds which were misspent or misapplied, such repayment may be made only from funds derived from non-federal sources.

Annual State Management Summary

Existing Title I Legal Framework

Section 142(a) of Title I requires that any state desiring toparticipate under Title I must submit to the Commissioner, through its state educational agency, an application which provides satisfactory assurances that it will properly and efficiently administer programs funded under Title I.

Section 434(b)(1)(a) of GEPA requires that any state desiring to participate under Title I must submit through its State educational agency (1) a general application which includes assurances that the State will meet certain minimum requirements; and (2) an annual program plan which also contains assurances.

Both Title I and GEPA provide that the Commissioner must approve an application (or in the case of GEPA, an annual program plan) which meets applicable requiremetns and must not finally disapprove an application (or annual program plan) except after reasonable notice and an opportunity for a hearing (Section 142(b) of Title I; Sections 425(b) and (d) of GEPA).

Finding*

The Title I application/annual program plan which is submitted to the Commissioner consists generally of 2-3 pages of assurances. The Title I application/annual program plan does not contain any information which enables the Commissioner to determine how the state plans to administer Title I during the pending year or how the state has administered Title I during the preceding year. In addition, the Commissioner is not required to make any written findings that the application/annual program plan sets forth adequate procedures to insure that the assurances of the application are carried out.

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* See chapter 6 of a report prepared by the Legal Standards Project entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act of 1965. This report was prepared under oontract with the National Institute of Education.

A recent HEW study observed that, "Since SEAs submit only assurances in Title I, there is no application review in the normal sense of the word. Therefore, pre-expenditure control is limited at the federal level." (The DHEW Sanction Study at p. 48 (January, 1977).

The inclusion of a state management summary with the Title I application would provide the Commissioner with a degree of pre-expenditure control at the Federal level, enabling the Commissioner to uncover problems before monies flow, thereby reducing the number of instances in which OE must later initiate action to recoup misspent funds.

Recommended Statutory Amendment

Amendment to Tentative Draft

(Relating to a State management summary)

Add as a new section to new subpart 3:

"State Management Summary

"Sec. 121.(a) Requirement for -- In order to assist a State educational agency in making a self-evaluation of its performance

under this title, and to assist the Commissioner in making the findings required by section 132 , each State education agency receiving funds under this title shall annually prepare a State management summary which meets the requirements of subsection (b). A copy of such summary shall be included in the State's application under section 101.

"(b) Contents of State Management Summaries--A State management summary shall include a description of its plans and procedures for carrying out its responsibilities under subpart 2 of this part and of its experience in carrying out its responsibilities under this title in past periods. The description shall include, or be supported by--

"(1) copies of (A) the regulations, guidelines, procedures, and program instructions issued by the State educational agency to provide guidance to local educational agencies and State agencies in carrying out programs and projects assisted under this title, (B) application forms which the State educational agency requires to be used, (C) check lists used by such agency in approving applications, (D) documents used by such agency in monitoring programs, and (E) technical assistance guides.

"(2) information with respect to the agency's management activities under this title for the preceding year (or other period prescribed by the Commissioner), including quantitative data summarizing such activities, and projections of such activities for the year covered by the application in question.

"(3) a statement of the number of local educational agencies in the State and the number of local educational agencies and State agencies in the State participating in programs under this title.

The information required by paragraph (2) shall include (A) the number of full-time equivalent person-days expended in reviewing applications under this title; (B) the number of full-time equivalent person days of technical assistance provided, and a brief description of the types of such assistance which were provided, (C) a list of the applicant agencies which were monitored, the number of full-time equivalent person days per monitoring visit, and a brief description of the manner in which major monitoring findings were disposed of, including action taken by State and local educational agencies and State agencies; (D) a list of applicant agencies which were audited, a statement showing whether each audit was State-conducted, locally conducted, or by an independent auditor, and a brief description of each major audit exception, the statutory or regulatory provision upon which the exception is based, the manner in which each audit exception was disposed of, the action taken by the State and local educational agencies, and State agencies; (E) the number of citizen complaints and a brief description of the manner in which each such complaint was disposed of; and (F) the number of times the State educational agency, after reasonable notice and opportunity for a hearing, withheld or suspended funds under this title.

Proposed Language for Inclusion in the Legislative History

This amendment provides that the Title I application submitted to the Commissioner by a state must also contain an annual State management summary. This part of the application will provide, in quantitative and summary form, a report of State administrative activity in the past year and a projection of similar activity for the coming year.

The annual state management summary will also include a copy of the regulations and guidelines, procedures, and instructions issued for Title I by the State educational agency, and of application and monitoring forms and instructions. The Committee intends that the Commissioner or his designate review such submissions prior to approval of the State application to determine that they meet the applicable requirements of this title and the regulations promulgated thereunder.

The amendment will strengthen the Commissioner's ability to determine if compliance problems exist before federal approval is granted. The Committee believes that closer scrutiny of State applications prior to approval will enable the Commissioner to reduce the number of instances in which the Commissioner must later initiate proceedings to recoup funds determined to have been expended in a manner contrary to the requirements of Title I. The Committee further believes that the annual State management summary will provide information which States may find useful in systematizing their administrative procedures and which will also be useful to the Office of Education in its program reviews of State administration.

To assist in the development and implementation of the annual State management summary, the Commissioner is directed to promulgate regulations under this section and develop a model reporting form to assist states in gathering data to be contained in their summary.

Audits and Audit Resolution

Existing Title I Legal Framework

The general authority and responsibility for federal audits of DHEW programs are vested in the HEW Office of Inspector General (Sec. 203(a)(1) of P.L. 94-505) and are exercised by the Assistant Inspector General for Auditing (Sec. 206(a)(1) of P.L. 94-505).

Neither the GEPA or Title I statute specifically address either the Inspector General's audit responsibility for Title I or the Commissioner's responsibility for audit resolution.

The GEPA regulations only refer to the auditing and audit resolution responsibilities of State agencies for grants and subgrantees for subgrants.* They are silent about HEW responsibility for auditing and the Commissioner's responsibility for audit resolution.

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* 45 C.F.R. §100b.301(h) and (i) provide that a State agency's financial management system for grants and a subgrantees financial management system for subgrants shall provide for "audits to be made by the State agency or subgrantee or at its direction to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. The grantee or subgrantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity...and a systematic method to assure timely and appropriate resolution of audit findings and recommendations."

The Commissioner has published in the Federal Register procedures and rules for the Title I Audit Hearing Board (37 F.R. 23002(1972), as amended by 41 F.R. 28658(1976). However, these only govern audit appeals and do not mention preceding steps in the audit resolution process.

Finding

Prior to the establishment of the HEW Office of Inspector General, audits of Title I programs were conducted by the HEW Audit Agency. A 1977 study completed by the Office of the Assistant Secretary for Education, The DHEW Sanction Study, found that approximately 155 Title I audits have been conducted from the beginning of the program to April 1975. (p. 19 n. 24).

The DHEW Sanction Study has identified Title I audit resolution as a problem of major proportion.

> Since the beginning of the program, it is estimated that about $259 million in Title I expenditures have been questioned or recommended for refund by the DHEW Audit Agency. Of that amount, OE has requested reimbursement from SEAs for approximately $12 million, but it is estamated that only about $1 million has actually been refunded. These figures indicate two types of problems.
>
> First, there is a huge gap ($167-million) between funds questioned by the DHEW Audit Agency and those agreed to by OE. A certain amount of disagreement is to be expected, but the size of this difference indicates a serious problem....
>
> Another type of problem exists with respect to the $12-million requested for refund in OE/BESE final determination letters. Any refunds made have come voluntarily from SEAs. OE has never used its authority to enforce involuntary collection through off-set or other various available means. Since the Commissioner is legally responsible for settling all audits, OE is presently in the process of establishing procedures and internal controls to enforce collection when necessary. Most of the $11-million not paid back is tied up in appeals or uncollectible at the present time for some other reason. However, there is no verified list of all audits currently collectible (pp. 19-20 footnotes omitted).

The NIE report, Administration of Compensatory Education (1977), stated that one Audit Agency official told regional audit directors:

> The Office of Education is no longer a high priority for audits. We've audited the hell out of them. We continue to have the same findings but there is no action taken by OE. What is the sense of devoting man year after man year in (sic) Title I if OE is not going to do anything about out findings? (p. 44)

A statutory amendment would clarify HEW audit responsibilities for Title I and the Commissioner's responsibility to resolve Title I audits.

Recommended Statutory Amendment

Amendment To Tentative Draft
(Relating to audits and audit resolution processes)

Strike out section 114 and insert the following:

"Audits and Audit Resolution

"Sec. 135. (a) Auditing--The Inspector General of the Department of Health, Education, and Welfare shall make provision for audits of grants made under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

"(b) Audit Resolution and Repayment--The Commissioner shall adopt procedures to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include timetables for each step of the audit resolution process and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of federal funds which were misspent or misapplied, the Commissioner

shall require the repayment of the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied. Such repayment may be made from funds derived from non-federal sources or from federal funds other than funds appropriated to carry out the purposes of this title. Such repayments may be made in either a single payment or in installment payments over a period not to exceed three years.

Proposed Language for Inclusion in the Legislative History

The amendment provides that the Inspector General of the Department of Health, Education, and Welfare shall make provisions for audits of grants under this title to determine, at a minimum, the fiscal integrity and legal compliance of grantee and subgrantee actions.

The Committee's review of a 1977 NIE report, Administration of Compensatory Education, indicates that there has been a decline in the level of HEW audit activity focused on Title I. The Committee wishes to emphasize that the Inspector General of DHEW should insure that Title I programs are audited on a regular basis.

The same NIE report suggests that the lower level of Title I audit activity is attributable to the lack of effective resolution of Title I audits by the Office of Education.

The amendment addresses the Commissioner's responsibility for Title I audit resolution by providing that the Commissioner shall adopt procedures to assure timely and appropriate resolution of Title I audit findings and recommendations. Such findings shall include timetables for each step of the resolution process and an audit appeals process. Furthermore, the amendment provides that *where the audit resolution process requires the repayment of federal funds which were misspent or misapplied, such repayment may be made from funds derived from non-federal sources or from federal funds other than funds appropriated to carry out the purposes of this title.*

The Committee has previously expressed its dissatisfaction with the Title I audit resolution process. Adequate improvement has not been forthcoming. The Committee directs the Commissioner to promulgate regulations describing each step of the audit resolution process and deadlines for its completion. The Committee expects that such regulation will reflect the relationships among the various OE responsible offices and the Office of the Inspector General. The Committee notes that a recent study prepared by the Office of the Assistant Secretary for Education, The DHEW Sanction Study, 1977, states that "...as of this writing it may be said that coordination among the various responsible OE offices (BESE, Audit Liason and Coordination Office, Audit Hearing Board, and Finance Division) is poor. Their roles are not clearly defined and written procedures have yet to be finalized" (p. 52).

The Committee further expects that in the process of developing adequate audit resolution procedures, the Commissioner will develop (1) a mechanism for coordinating audit resolution among the various responsible offices; (2) common audit standards agreed upon by OE, the Office of the Inspector General, and HEW's Office of General Counsel; (3) standards for adequate documentation of audit findings; (4) regular audit status reporting to trace audits in progress; to document where in the audit resolution process they are; and to record their final disposition, (including collection status); (5) and methods for audit follow-up to insure that corrective action has been taken.

Withholding By The Commissioner

Section 146 of Title I expressly authorizes the Commissioner to withhold funds -- or in his discretion to direct a SEA to withhold funds for non-compliance with Title I requirements.

Section 146 provides that

> Whenever the Commissioner, after reasonable notice and opportunity for hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurances set forth in the application of that State approved under section 122 or 142(b) the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall not make further payments under this title, to specified local educational agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this title, or payments by the State educational agency under this title shall be limited to local educational agencies not affected by the failure, as the case may be.

Prior to initiating a hearing, the Commissioner must attempt to resolve apparent differences between OE and the SEA regarding the interpretation or application of any Title I requirements (45 C.F.R. §116.20(c)).

Finding

The DHEW Sanction Study (1977) concluded that in the ten year history of Title I, OE has never withheld funds for non-compliance with a Title I assurance. The study noted that "one ambiguity concerning enforcement of the withholding provision is the fact there are few precedents on what constitutes substantial non-compliance." Based on these findings that the present withholding scheme is not working, the Legal Standards Project reviewed other federal legislation to determine what alternative enforcement schemes were available. We found a statutory provision in the revenue sharing legislation that requires a compliance agreement before funds which have been withheld can be released (see §122(d) and (e) of the State and Local Fiscal Assistance Act of 1972, as amended in 1976). We concluded that the concept of a compliance agreement was useful, but that, for Title I purposes, the Commissioner would have greater flexibility if he were authorized to enter into a compliance agreement in lieu of withholding, rather than as a condition precedent to the release of withheld funds. Consequently, the Legal Standards Project has drafted a statutory amendment which (a) generally retains the existing withholding provision, (b) includes the authority under Title I to suspend, pending a hearing, authority which the Commissioner presently has under section 434(c) of GEPA, and (c) authorizes the Commissioner to enter into a compliance agreement in lieu of withholding.

Recommended Statutory Amendment

Amendment To Tentative Draft
(Relating to withholding by the Commissioner and to compliance agreements)

Strike out section 113 of Tentative Draft, and insert the following:

"Withholding of Payments

"Sec. 136. (a) Withholdings--Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in the application of that State approved under section 52 or 101 the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this title, or payments by the State educational agencies and State agencies not affected by the failure, as the case may be. Pending the outcome of any proceedings under this subsection, the Commissioner may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) Notice to Public of Commissioner Withholding--Upon receipt by a State of a notice under subsection (a) that the Commissioner is withholding payments, the Commissioner shall take such action as may be necessary to bring his action to the attention of the public within the State.

"(c) Compliance Agreements--The Commissioner may suspend the initiation or continuation of his withholding action under subsection (a) during any period there is in effect a compliance agreement with the State educational agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the State educational agency fails to comply with the terms agreed to, such an agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the Commissioner shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which (1) sets forth the terms and conditions to which the State or local educational agency or State agency has agreed to in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, (2) which addresses all the matters that formed the basis for the initiation of the withholding action by the Commissioner, and (3) which may consist of a series of agreements that in the aggregate dispose of all such matters. A compliance agreement under this subsection shall not be exempt from disclosure under any provision of section 552, of title 5 United States Code. Within 15 days after the execution of any compliance agreement under this subsection, the Commissioner shall send a copy thereof to each organization or person

who filed a complaint with respect to any failure to comply which is covered by that agreement.

Recommended Language for Inclusion in the Legislative History

The amendment adds to the Commissioner's present withholding authority the discretion to suspend the initiation or continuation of a withholding action by entering into a compliance agreement with a State educational agency. The Committee intends that if a compliance agreement has been entered into and the Commissioner subsequently finds, after reasonable notice and opportunity for a hearing, that there has been a failure to comply substantially with the compliance agreement, the Commissioner shall not make further payments under this title to the State (or in his discretion, that the State educational agency shall not make further agreements under this title to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Thus, if the Commissioner finds that a State educational agency has not complied with a compliance agreement, the Commissioner shall withhold payments under this title until he is satisfied that there is no longer a failure to comply. The Committee does not intend that another compliance agreement be entered into if the Commissioner, after notice and opportunity for a hearing, finds that a State educational agency has not complied with the terms of a compliance agreement. In such a case, the Committee intends that Commissioner withhold payments under this title.

The Committee believes that the Commissioner would be aided in making a finding of "a failure to comply substantially with any assurance set forth in the application" if the Commissioner adopted and applied standards that gave meaning to "a failure to comply substantially". The Committee strongly urges the Commissioner to adopt such standards and to apply them in appropriate situations.

The Committee further intends that compliance agreements shall not be exempt from public disclosure under any provision of section 552 of Title 5 U.S.C. The Commissioner shall promptly provide a copy of such compliance agreements to any person who requests one. Finally, with respect to the relationship between compliance agreements under this section and the audit resolution and repayment procedures under section 114(b), the Committee intends that compliance agreements not be used to reduce or forgive any amount of funds which final audit resolution determinations have determined were misspent or misapplied and must be repaid.